

Mock Trial Handbook



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*This project is supported in part through a grant
from the Arkansas Humanities Council
and the National Endowment for the Humanities*

MOCK TRIAL HANDBOOK

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Acknowledgements

The compilation of this "Mock Trial Handbook" would have been impossible without the assistance of the following.

Leslie Przybylek, Curator at the Fort Smith Museum of History, willingly assisted with the daunting task of researching and copying criminal case files and trial transcripts at the Southwest Region of the National Archives in Fort Worth, Texas.

David Reid, Executive Director at the Fort Smith Museum of History, undertook the process of reading and summarizing the case materials on Elsie and Margaret James.

When the time came to test the trial materials and process, Tom Wing, then a teacher at Fort Smith Christian School, graciously offered the use of his students. Tom had been using mock trials in his classroom for several years and offered important insights about the strengths and weaknesses of the technique. Tom, now employed as a permanent park ranger at Fort Smith National Historic Site, also assisted in the preparation for the initial mock trials presented to the public.

Leslie, David and Tom all served as able reviewers for the content of this manual.

John Noggle and his students at Fort Smith Christian School during the fall of 1998 were the first to use the contents of this handbook. Their enthusiasm for the project and evaluation of materials provided valuable suggestions for improvement.

Funding for this project was possible through the Arkansas Humanities Council.

I. Introduction

What is justice? The American people have struggled with the answer to that question since colonial times and usually look first to the system of local, state and federal courts for satisfactory responses. In recent years, the fascination with the legal system has grown in unprecedented ways. Court TV and programs like CNN's *Burden of Proof* enjoy high ratings. Legal thrillers grace movie screens and top the best sellers list. The development of mock trial competitions also reflects this trend.

In Fort Smith, Arkansas, discussions of justice often turn to the community's most famous citizen, Judge Isaac C. Parker. Serving on the bench of the Western District of Arkansas from 1875 to 1896, Parker is remembered as a champion of fairness in the federal courts. His legacy still offers important lessons for today's criminal justice system. For Parker, charging a jury in 1895, the goal of the system was "that no guilty man shall escape and no innocent man shall be punished."

This combination of the continuing importance of the courts in American society and the local resources available in western Arkansas has led to the development of a mock trial program using historic trial transcripts. It not only provides a lesson in local history but also gives students the opportunity to participate in a structured courtroom experience. Their skills of critical and strategic thinking, questioning, listening, oral presentation, and argument will further evolve. The process fosters cooperation among students and among the community at large and the school system. It will also provide a means of career exploration for students and begin to prepare them for future roles as parties, witnesses or jurors in legal actions.

The development of the mock trial program, including this handbook, is a component of "In the Shadow of the Gallows," an exhibit and program series examining the relationship between the residents of Fort Smith and the federal executions that occurred in the community between 1873 and 1896. The primary exhibit at the Old Fort Museum will open September 4, 1998 and run through October 1999, and coincide with the loan of the Judge Isaac C. Parker Courtroom from the Fort Smith National Historic Site. The accompanying program series will use a variety of interpretive techniques to highlight selected humanities topics included in the larger exhibit content. This project is supported in part through a grant from the Arkansas Humanities Council and the National Endowment for the Humanities.

This manual is organized to (1) provide an introduction to the legal system as it existed between 1875 and 1896 in the federal court at Fort Smith, (2) introduce the mechanics of the mock trial process, (3) supply materials from four historic trials and (4) suggest classroom strategies for teachers.

II. The Nineteenth Century Context

Fort Smith is best remembered as the home of the "Hangin' Judge," Isaac C. Parker. The popularity of movies like *True Grit* and *Hang Em' High* and visits to the restored gallows and courtroom often obscure the significance of the history of federal justice in this region.

The court over which Judge Parker presided was a component of the judicial system as established by the Judiciary Act of 1789. Although amended over time, the federal court system still reflects the basic principles of this legislation which produced a Supreme Court and a national pattern of district and circuit courts.

Created in 1851,¹ the Federal Court for the Western District of Arkansas had several unique features. Most importantly, it held jurisdiction over the Indian Territory (present day Oklahoma). This vast area was home to the Cherokees, Chickasaws, Choctaws, Creeks and Seminoles, removed from their homelands in the Southeast by the U.S. government during the 1830s. Treaties in 1866 reduced the territory of those nations as a result of alliances of at least some portions of each tribe with the Confederacy. This resulted in the relocation of additional Indian tribes in the territory, as well as increasing pressure from whites to open the lands to settlement. The treaties also granted the railroads access, creating a transportation link that enhanced the possibility of huge profits in cattle, lumbering and mineral mining. With these opportunities for wealth, the overlapping jurisdictions of the U.S. government and independent Indian nations, and the vast acreage and distances that made avoiding justice easy, the Indian Territory became a chaotic refuge for the lawless.

Any crime committed in this area that involved a non-tribal member fell to the Western District of Arkansas. Following the Civil War, increasing numbers of American citizens moved into Indian Territory (many of them illegally) in search of new lands. The crime rate increased with the population growth. Until 1895, only tribal courts with jurisdiction over tribal members existed in Indian Territory. As a result, the Fort Smith court tried most of the criminal cases.² While many federal courts were relegated to civil actions (bankruptcy, commerce, naturalization, etc.), the docket in Fort Smith read murder, assault, larceny, and liquor trafficking.

In the late nineteenth century, Indian Territory and Western Arkansas had a rich cultural mix. Defendants, witnesses, jurors and court officials might represent one of many Indian tribes, the African American community or the increasing number of white settlers

¹ When established, the seat of the Western District was Van Buren. The court moved to Fort Smith in 1871.

² The Western District of Arkansas held sole jurisdiction over Indian Territory until 1883. After that time, the jurisdiction was divided between the District of Kansas, the Northern District of Texas, and the Eastern District of Texas. The first federal courts in Indian Territory were established in 1895.

moving into the region. Some participants in trials could only understand tribal languages and the court employed interpreters to ease the communication barrier. Jurors, including black men but no women of any race, were selected only from western Arkansas, leaving Indian Territory residents to wonder if they were truly judged by a group of their peers.

Another issue raising concerns about the Western District was its reputation as a "court of no appeal." When Congress created the Western District of Arkansas, it gave the court circuit as well as district powers.³ This meant that Judge Parker, the sitting district judge, was also the circuit judge who heard appeals. It was highly unlikely that any defendant could convince Parker to reverse himself! The only option, then, was to ask the President of the United States for a commutation or pardon. Congress rectified the situation in 1889 with the passage of the Criminal Appeals Act. This not only created a separate circuit court of appeals that included the Western District but also gave defendants in capital cases the right to appeal to the U.S. Supreme Court. Between 1891 and 1897, forty-four death sentence convictions were appealed from Fort Smith. The Supreme Court reversed thirty-one of those, upheld twelve and dismissed one.

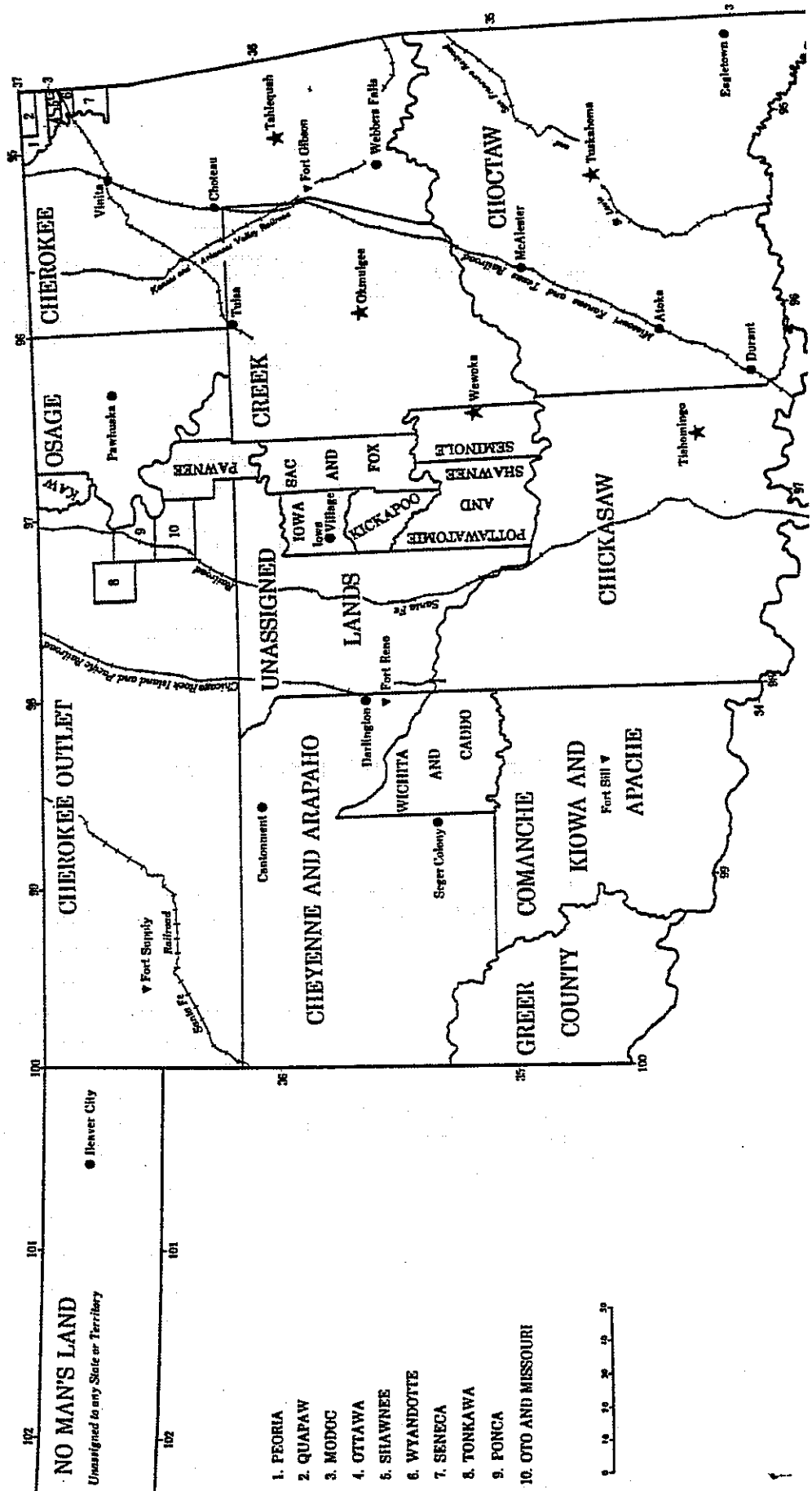
The dominant personality defining the efficiency of the Western District in the late nineteenth century was Judge Isaac C. Parker. Appointed to the bench in 1875, the former U.S. Congressman from Missouri served in Fort Smith until his death on November 17, 1896. During those twenty-one years, Parker concluded over 12,000 criminal cases with nearly 9,000 convictions. Today, Parker is remembered as a "hanging judge." Of the 160 people he sentenced to hang (including four women), seventy-nine actually reached the gallows. During sentencing, Parker often said, "I do not desire to hang you men. It is the law." This reflected the mandatory federal death sentence for murder or rape convictions.

After September 1, 1896, the Western District of Arkansas no longer held jurisdiction over the Indian Territory. The extraordinary caseload disappeared and with it, the court's uniqueness. Although still operating in Fort Smith today, the Federal Court for the Western District of Arkansas' most significant period ended with the close of the nineteenth century.

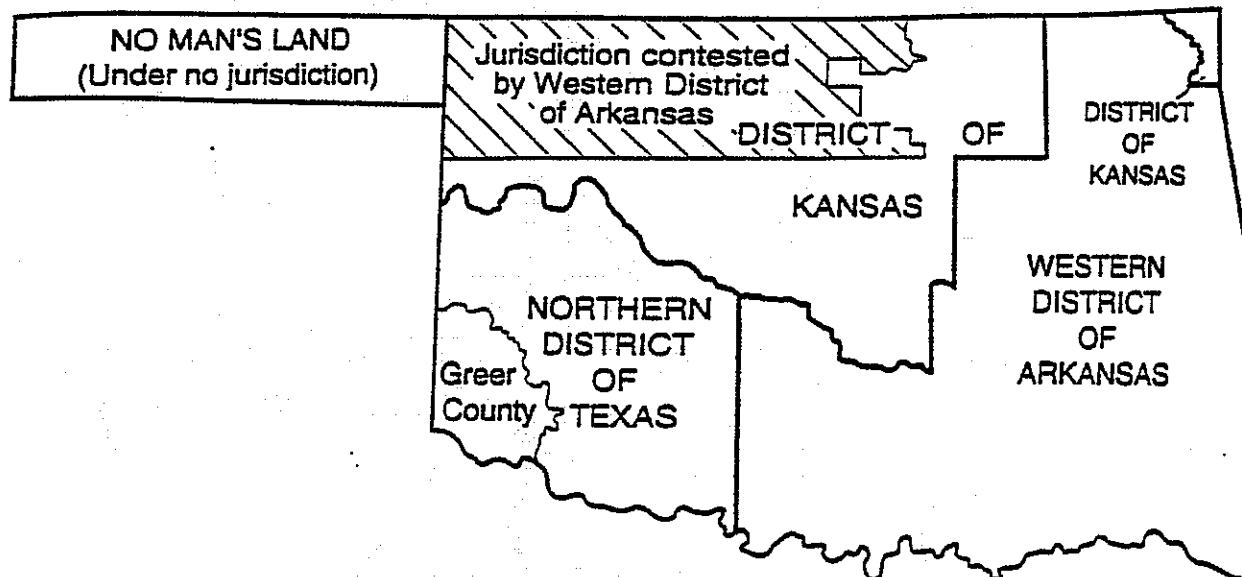
³ Four other federal courts also had this distinction: Eastern Arkansas, Northern Mississippi, Western South Carolina and West Virginia.

Indian Territory, 1866-1889

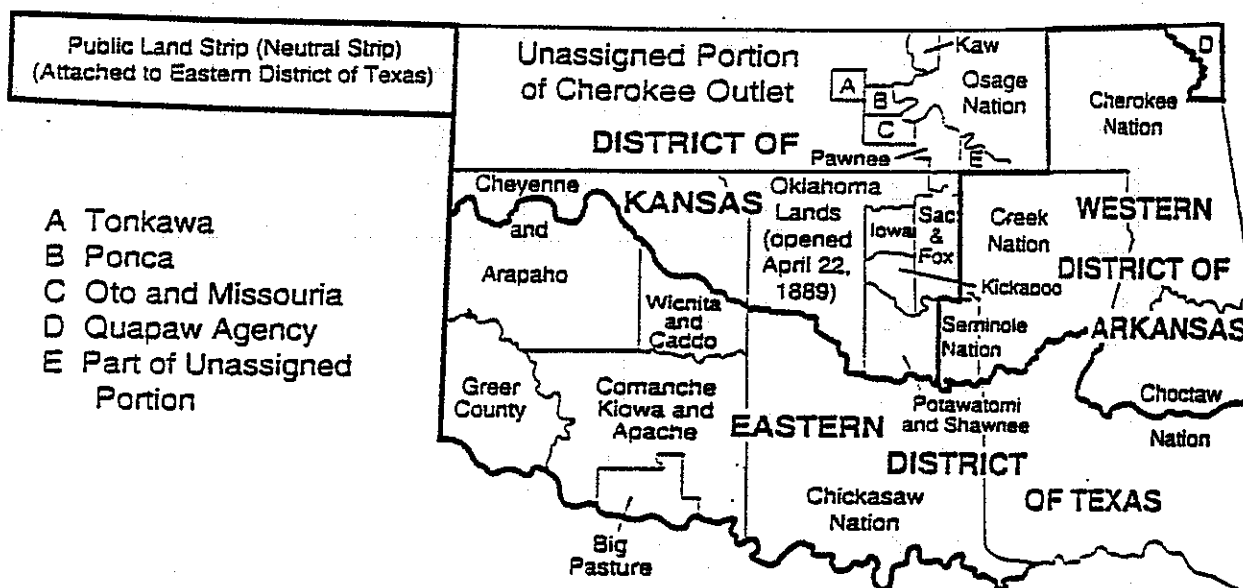
From John W. Morris, Charles R. Goins and Edwin C. McReynolds, *Historical Atlas of Oklahoma* (Norman: University of Oklahoma Press, 1986).



Federal Judicial Districts in Indian Territory, January 6, 1883-February 28, 1889

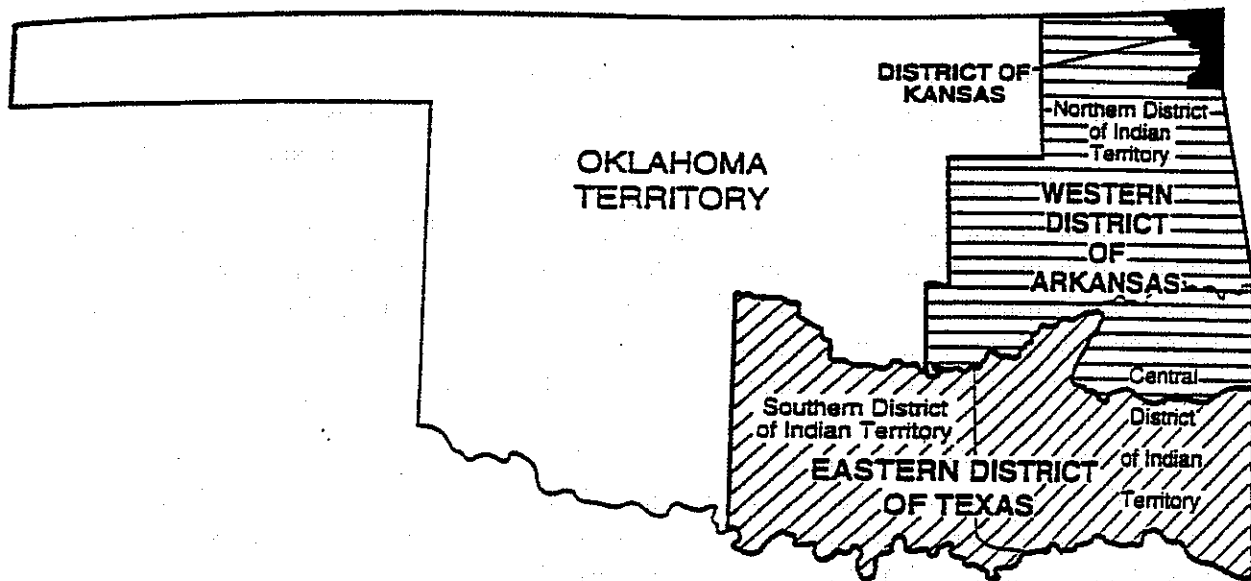


Federal Judicial Districts in Indian Territory, March 1, 1889-May 1, 1890

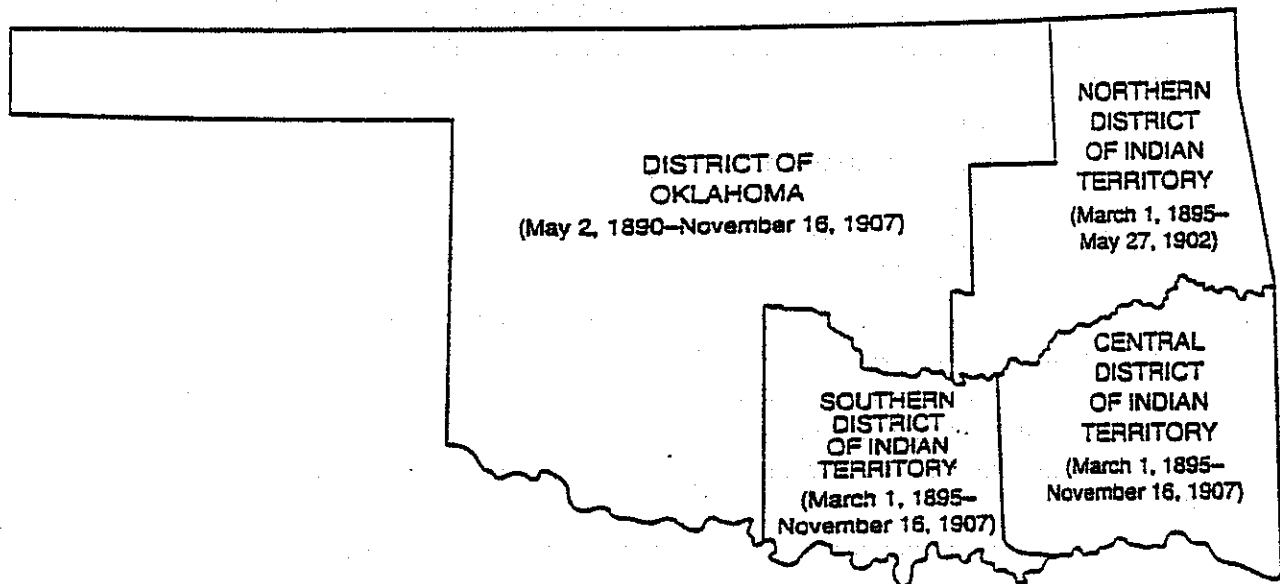


From Jeffrey, Burton, *Indian Territory and the United States, 1866-1906: Courts, Government, and the Movement for Oklahoma Statehood* (Norman: University of Oklahoma Press, 1995).

Federal Judicial Districts in Indian Territory, March 1, 1895-August 31, 1896



Federal Judicial Districts of Oklahoma and Indian Territory, September 1, 1896



From Jeffrey, Burton, *Indian Territory and the United States, 1866-1906: Courts, Government, and the Movement for Oklahoma Statehood* (Norman: University of Oklahoma Press, 1995).

III. The Mock Trial Process

The following steps will assist teachers in planning and organizing a mock trial experience.

1. Select the Trial and Gather Appropriate Materials

Section IV of the *Handbook* contains case files for four historic trials. An introductory section explains how those materials were developed and suggests methods for their use by students.

An evidence section has been prepared for each case file and teachers may wish to supply props for specific trials. For example, in the case against Shepard and William Busby, one witness produces three bullets retrieved from the victim. Students might use representative items in the mock trial.

Other standard props include a judge's robe (academic gown), gavel and Bible.

2. Determine the Time Frame and Location; Make Necessary Arrangements

A mock trial may be a relatively simple affair, consuming one or two class periods, or a more elaborate undertaking in which an historic or modern courtroom is used and an audience is invited to watch the drama unfold.

The amount of time available to a teacher and the specific learning objectives are the key issues in determining the type of mock trial experience.

3. Assignment of Roles to Students

A mock trial project should involve every student in the class. How this is achieved will vary greatly from classroom to classroom. The following roles are all possibilities.

- a. attorneys
- b. witnesses and alternates
- c. defendants
- d. jurors and alternates
- e. clerk or bailiff

The clerk or bailiff announces the entrance of the judge, calls the case, marks evidence and swears in witnesses.

The student should announce the opening of the court by stating "all rise" as the judge enters and then stating "please be seated" when the judge is seated. The clerk then calls the name of the case, e.g., "Your honor, our case for today is Smith v. Smith."

As witnesses are called the clerk requests them to raise their right hands and asks, "Do you swear to testify to the truth, the whole truth and nothing but the truth?" When attorneys have documents or evidence, they should first hand them to the clerk who marks it "Plaintiff's Exhibit A, B, C etc." and "Defendant's Exhibit A, B, C etc.", depending on which attorney is presenting it.

f. formal observers

The observers will be valuable in debriefing the trial. They will have the job of observing the trial as it unfolds, of looking for the good points and errors and deficiencies, and of making notes that can be referred to afterwards when it comes time to analyze the event

g. judge

Students selected for the role of judge must be able to learn the trial process well, have the capacity to be decisive and have the ability to give directions to other students. Teachers may decide to play the role of judge themselves or to invite guests (legal professional) to the classroom to fill this role.

4. Distribution of Materials to Students

5. Student Preparation

Teachers may design specific lesson plans and activities to prepare students for the mock trial experience. See *Section V, Classroom Strategies for Teachers*.

6. Trial Conducted

7. Debriefing

The post-trial activities are essential to leaving students with an understanding of the trial process. The debriefing should analyze the strong and weak points of each case, identify the persons whose performance in the trial made a difference in the case and critique the trial from the standpoint of its success in achieving justice.

Teachers may wish to do this through a presentation by the formal observers, class discussion, small group discussion and/or written assignment.

The Student Handouts (see following pages):

1. The Trial Process

A general introduction for students who have not previously studied trials in detail, or for those needing refresher reading.

2. Steps in a Trial

A guide designed to assist students with their preparation for mock trial roles.

3. Guidelines for the Jury

A summary of the requirements for reaching a guilty verdict in a murder trial.

4. Roles in the Courtroom of the Western District of Arkansas

5. Outline of Basic Court Procedures

6. Case Material (see *Section IV*)

A The Trial Process

The Purpose

"Equal Justice Under Law" are the words carved deep into the stone above the entrance to the Supreme Court of the United States. This statement reflects the primary purpose of law in the United States: to ensure that every person living in this country has the freedom and security to enjoy the benefits of life in a democratic society.

According to the democratic principles on which American society is built, every person should have a free and equal opportunity to pursue individual goals and desires. However, so that one individual's pursuit of happiness does not infringe upon another's, the citizens of this country, through the electoral and legislative processes, agree upon certain guidelines for their behavior. These guidelines comprise our system of law.

However, at times individuals come into conflict with one another, in spite of the system of laws. The reasons for conflict are varied. Laws do not cover every possible situation. Often the individuals involved do not know or understand the law. In certain cases an individual deliberately chooses to break the law.

Whenever a dispute arises between individuals or between an individual and the government, or whenever an individual offends the general will of the people by breaking the law, a solution must be found that is in harmony with the principles of our society. The solution might be a clarification of the rights of the parties; a determination of right and wrong, or guilt and innocence; a direction to one individual to take certain actions to make up for harming another's rights; or even a fine and/or a sentence as punishment for breaking the law.

A trial is a widely recognized means for settling such disputes. However, going to court usually should be the last resort in seeking a solution. People should try to work out their problems first in one-to-one communication, or with a third person. Three common ways of settling disputes without going to court are: (1) *negotiation*, in which the parties talk face-to-face; (2) *mediation*, in which the parties talk through a third person called a "mediator" who helps them find a common ground on which they can agree to a solution; and (3) *arbitration*, a process less formal than a trial, in which a third party hears the complaints and makes a decision that the parties have agreed in advance to abide by.

However, when these methods fail, parties to the dispute sometimes go to a trial to find a solution. A trial is an "adversary process." This means that two or more persons who are in conflict present their arguments and

their evidence before a third party not involved in the dispute, who then renders a decision. The "impartial" third party that renders the decision can be a judge or a jury. The judge or jury functions as the "trier of fact."

The Parties

A trial revolves around an argument involving two or more people. The people who bring their argument to the trial are called the "parties" to the case.

A civil trial involves one person complaining about something another person did or failed to do. The person who does the complaining is called the "plaintiff," and the person who is the object of the complaint is the "defendant."

In a criminal trial, a person is accused of a particular act which the law calls a crime, such as murder, robbery, or fraud. The person who does the accusing is the "prosecutor." The prosecutor speaks on behalf of the government, which in turn represents the people of the state or nation. The person who is accused of the crime is the "defendant."

Except in a few special circumstances (most notably small claims court cases in which lawyers frequently are not involved), both parties will hire and instruct lawyers to prepare their respective cases and to make their arguments in court.

The Facts of the Case

Long before a trial actually takes place, some argument or incident occurs. Perhaps there is a traffic accident; a husband and wife decide they can no longer live together; someone is robbed at gunpoint. The argument or incident involves many facts, which together make up the "case." Persons on opposite sides of a case often will view the facts quite differently. This disagreement over the facts of an incident forms the basis for a trial.

In a trial, the parties present their differing versions of the facts before an impartial "trier of fact," a judge or a jury. The job of the trier of fact is to decide which facts are correct.

The Evidence

While the description of the facts of the argument or incident as presented by each party is important, the trier of fact usually needs a lot more information in order to make a decision. The version of the facts given by the parties may be incomplete, or affected by their emotional state at the time of the incident. Or, in a few cases, parties might even give false versions of the facts.

For all of these reasons, the trier of fact needs more information than just the stories of each party. In a trial, the attorneys for each side present all of the factual information they can gather to support their side of the case. This information is called "evidence."

Evidence may take several forms including:

- **Testimony:** A person, called a "witness," tells the court what he or she saw, heard, did, or experienced in relation to the incident in question.
- **Documents:** Letters, notes, deeds, bills, receipts, etc., that provide information about the case.
- **Physical Evidence:** Articles such as weapons, drugs, clothing, etc., that can provide clues to the facts.
- **Expert Testimony:** A professional person, someone not involved in the incident, who can give medical, scientific, or similar expert instruction to help the trier of fact decide the importance of the evidence presented.

The Burden of Proof

To guarantee that the trial process is fair to everyone involved, certain legal principles govern the way parties present their evidence, and the way the judge or jury considers the evidence and makes a decision.

One of the most important rules concerns which party must prove his or her version of the facts, and how convincing he or she must be. This rule is called the "burden of proof."

In a civil case, the person who brings the case to court and does the complaining (the plaintiff) has the burden of proof. Plaintiffs must convince the judge or jury that these facts are correct "by a preponderance of the evidence," meaning that their evidence is slightly more convincing than the defendants'. Some refer to this as meaning that 51 percent or more of the evidence supports plaintiffs' side.

In a criminal case, the burden of proof is considered to be much stricter, because the defendant may go to prison if the prosecutor proves the state's case. Therefore, the prosecutor must convince the judge or jury "beyond a reasonable doubt" that the accused committed the crime. Some state that "beyond a reasonable doubt" means that the trier of fact (judge or jury) must be at least 95 percent sure that the prosecutor is correct.

The Defense

As described above, the complaining or accusing parties usually have the burden of proving their particular version of the facts. The job of the defense team is to present evidence which prevents the plaintiff or prosecu-

tor from meeting the burden of proof. Defense evidence should explain, disprove, or discredit the evidence presented by the other party. For example, in a traffic accident case, suppose the plaintiff presents a witness who testifies that the defendant was speeding just prior to hitting the plaintiff's car in an intersection. The defense could then present a witness who tells the court that the plaintiff, who was hit while making a left turn, failed to signal before making the turn. The defense could also try to show that the defendant was not speeding at all. This defense testimony weakens the plaintiff's case by presenting an alternative explanation for the accident.

In criminal cases, defendants try to discredit the evidence presented by the prosecutor in a variety of ways, including: (1) presenting evidence to show that the defendant was not present at the scene of the crime (called an "alibi"); (2) showing that the defendant was acting to protect him/herself (self-defense); and (3) presenting medical evidence showing that the defendant was mentally deranged at the time of the crime (insanity defense).

Preparation for Trial

Attorneys are responsible for collecting all of the evidence that supports the side of the case they are representing and for deciding how to present that evidence at the trial. It is the attorney's job, therefore, to work out a strategy for the trial.

In general, there should not be any surprises at the trial (contrary to popular belief) if the attorneys are well prepared. This lack of surprises is also due to the fact that the attorneys for the opposing sides must let each other know what evidence they have collected. This advance sharing of information is called "discovery." Discovery enables both sides to prepare their cases as well as possible, to ensure that the trial is fair.

Before the trial, witnesses might make "affidavits," which are written statements of the facts, made voluntarily and sworn to, usually in the presence of a notary or other person authorized to administer oaths. Witnesses might also be required to give a "deposition," which is testimony given out of court. At a deposition, attorneys for both sides are present to question the witness, while a stenographer records the testimony for later use in court.

During this period before the trial, attorneys must also spend time preparing for what they will actually say and do at each step in the trial. These steps and suggestions for attorney preparation are contained in the next section.

B Steps in a Trial

Note to Students: Wherever the word "PLAINTIFF" appears below, substitute "PROSECUTOR" for a criminal case.

A number of events occur during a trial, and most must happen according to a particular sequence. (The sequence may vary slightly based on state or local rules or practice.)

The following is the basic sequence in the trial process:

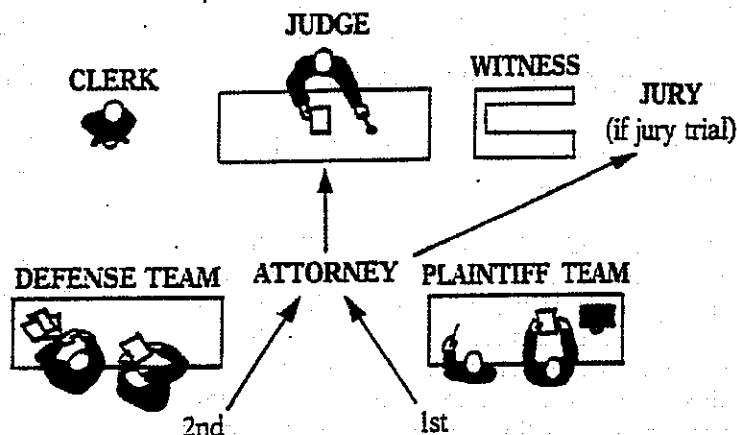
1. Judge enters and takes the Bench.
2. Clerk calls the case.
3. Plaintiff (Prosecutor in criminal case) makes an opening statement.
4. Defense makes an opening statement.
5. Plaintiff presents case:
 - a. Plaintiff calls first witness and conducts direct examination.
 - b. Defense cross examines the witness.
 - c. Plaintiff conducts redirect examination, if desired.
 - d. Steps a, b, and c completed for each of the plaintiff's other witnesses.
6. Plaintiff rests case.
7. Defense presents case in same manner as Plaintiff in #5 above, with Plaintiff cross examining each witness.
8. Defense rests.
9. Plaintiff makes closing argument.
10. Defense makes closing argument.
11. Plaintiff offers any rebuttal argument.
12. Jury instructions (if jury trial).
13. Jury/judge deliberations.
14. Verdict/decision/judgment.
15. Order (civil trial); Sentence (if found guilty in a criminal trial).

The *main* steps in the trial sequence above—before the judge or jury start deliberating—can be summarized as (1) opening statement by plaintiff; (2) opening statement by defense; (3) direct examination of plaintiff's witnesses; (4) cross examination of plaintiff's witnesses; (5) direct examination of defense witnesses; (6) cross ex-

amination of defense witnesses; (7) closing statement (argument) by plaintiff; and (8) closing statement by defense. Note how the sides take turns.

In the following sections, the four most critical stages of the trial are highlighted.

STEPS IN A TRIAL #1 The Opening Statement



DESCRIPTION: The opening statement is the introduction to the case, the very first time the attorneys for each side get to tell the judge and jury about what happened to their clients. The first impression is very important; it "paints a picture" of the case that will be presented for each side. Opening statements should include: (1) a summary of the facts according to each party; (2) a summary of the evidence that will be presented at the trial; and (3) a statement regarding what the party hopes to get out of the trial.

Style Points:

1. **Plaintiff's Attorney:** Since this attorney speaks first, it is very important for the plaintiff's opening statement to include a good summary of the facts, presented in a light most favorable to the plaintiff. If the opening statement presents a very convincing picture of the plaintiff's case, the defense team will have a much harder time changing the minds of the judge and jury.
2. **Defense Attorney:** The defense team always has the task of showing that the plaintiff's version of the facts is not correct. In preparing an opening statement, the defense attorney will have to guess how much detail and what kind of emphasis the plaintiff's attorney

will make in the plaintiff's opening statement. The defense attorney should be ready to make adjustments in his or her prepared statement while the plaintiff's attorney speaks. The defense attorney should highlight the facts that are in dispute, and emphasize the kinds of evidence the defense will present to show that the plaintiff is wrong.

Both attorneys should practice making eye-to-eye contact with the judge while speaking.

STEPS IN A TRIAL #2 The Direct Examination

Diagram (at bottom of page) shows Plaintiff's direct examination of a witness.

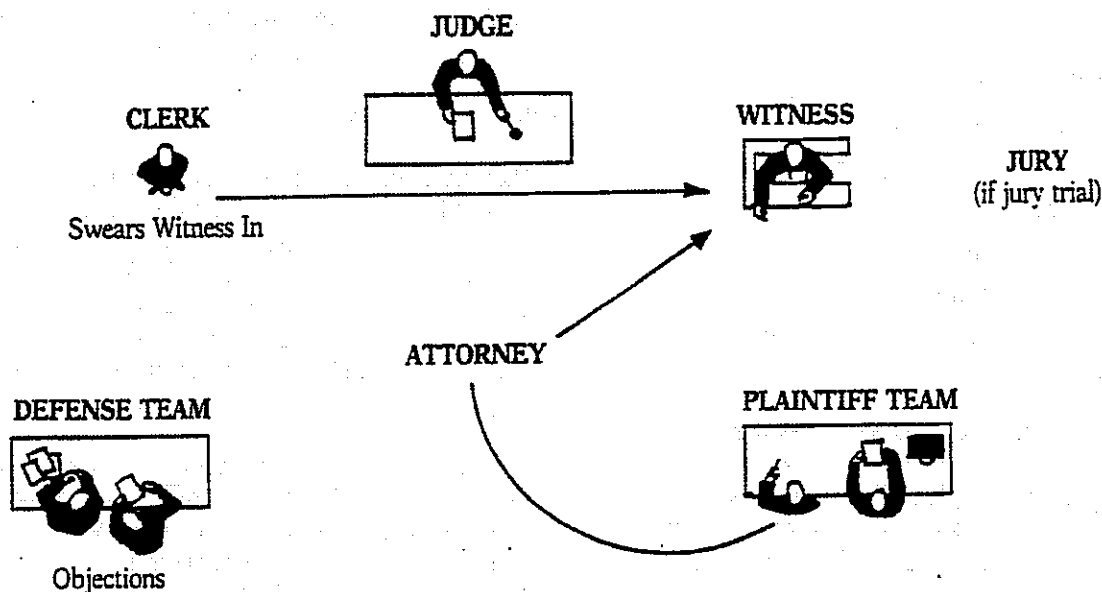
DESCRIPTION: After the opening statements, the process of "witness examinations" begins. First, the plaintiff's team presents its witnesses, then the defense team. Each time a witness is called to the stand, the attorney who called the witness asks a series of questions called the "direct examination." These questions are designed to get the witness to tell a story, reciting what he or she saw, heard, experienced or knew about the case. The questions must ask only for facts, not for opinions (unless the witness has been declared to be an "expert" in a particular subject, such as a doctor or a police detective). In addition, the attorney may only ask questions and may not make any statements about the facts, even if the witness says something wrong. When the direct examination is completed, an attorney for the other side

then asks questions to show weaknesses in the witness' testimony, a process called "cross examination."

Style Points:

1. **Attorney Conducting Direct Examination:** Questions should be designed to get the witness to tell the story in a logical manner. Avoid lengthy or complicated questions. Leading questions cannot be used on direct examination. (See Rules of Evidence section.) Be prepared to rephrase questions in case the witness does not understand a question or fails to remember facts accurately, or in case the other side objects to a question. (Grounds for objections are discussed in the Rules of Evidence section.)
2. **Opposing Attorney:** Listen carefully to the questions and answers, since cross examination must be limited to subjects discussed in the direct examination. Listen for violations of the Rules of Evidence, and be prepared to make good objections.
3. **Witnesses:** The most important factor in the trial is the *believability* (often called "credibility") of the witnesses. Witnesses should tell their stories clearly with as little hesitation as possible. It's important for witnesses to know the facts thoroughly.

NOTE: At the close of cross examination (see next section) the attorney who conducted the direct exam may do a "redirect." A redirect examination follows the same rules as direct. However, the questions are limited to subjects discussed in the cross examination.



STEPS IN A TRIAL #3

The Cross Examination

Diagram (at bottom of page) shows Defense Attorney cross examining a Plaintiff's witness.

DESCRIPTION: The purpose of the cross examination is to show the judge and jury that a given witness should not be believed because that witness: (1) cannot remember facts; (2) did not give all of the facts in the direct examination; (3) told a different story at some other time; (4) has a reputation for lying; (5) has a special relationship to one of the parties (maybe a relative or close friend) or bears a grudge toward one of the parties. The cross examination questions are designed to bring out one or more of the above factors. These questions must be limited to subjects discussed in the direct examination or they can be objected to as "outside the scope of direct examination."

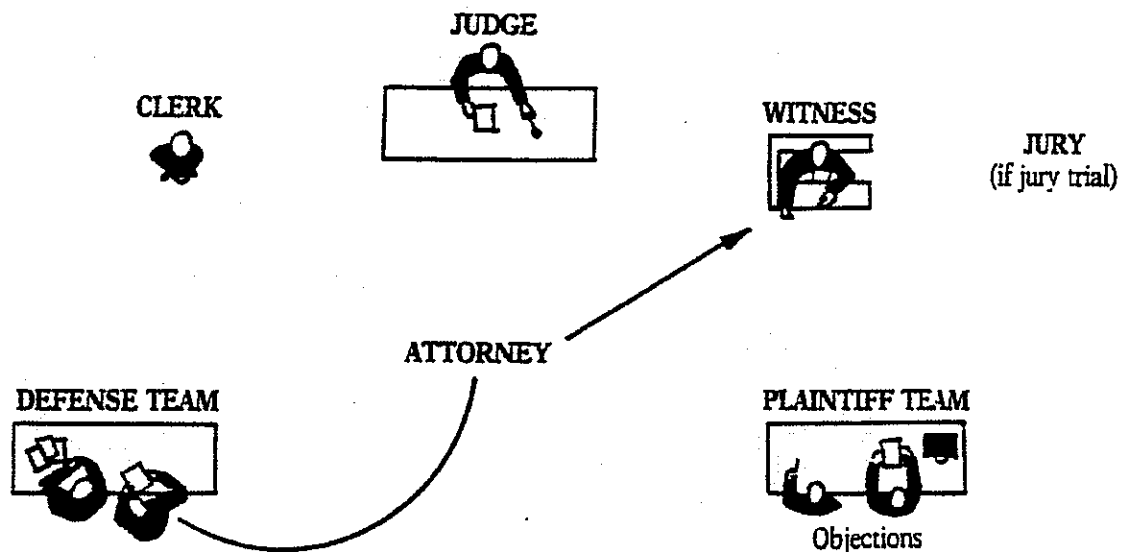
Style Points:

1. **Attorney Conducting Cross Examinations:** This attorney must know precisely what kind of weaknesses he or she wants to show in the witness, and then design the questions to point them out. Questions should be

short; "leading" questions (discussed in the Rules of Evidence) are allowed (For example, the attorney may use questions with phrases like, "Isn't it true that ...?") Questions should not be long or argumentative, nor should they ask the witness "How," "Why" or "Could you explain." Questions are best that call for a simple "yes" or "no" answer. Questions that give the witness a chance to make an explanation will usually not help the cross examiner's case.

2. **Opposing Attorney:** Listen carefully for violations of the Rules of Evidence, and be prepared to make objections. Listen carefully to the kind of attack the cross examiner is making; decide whether the attack is successful. After the cross examination, the opposing attorney may conduct a "redirect" examination, to give the witness a chance to explain or correct some points made in the cross examination.

3. **Witness:** Witnesses should try to give explanations whenever possible. Witnesses must pay close attention during cross examination, since the attorney *may* try to confuse the witness. They should try to stick to the facts they recited on direct examination.



STEPS IN A TRIAL #4

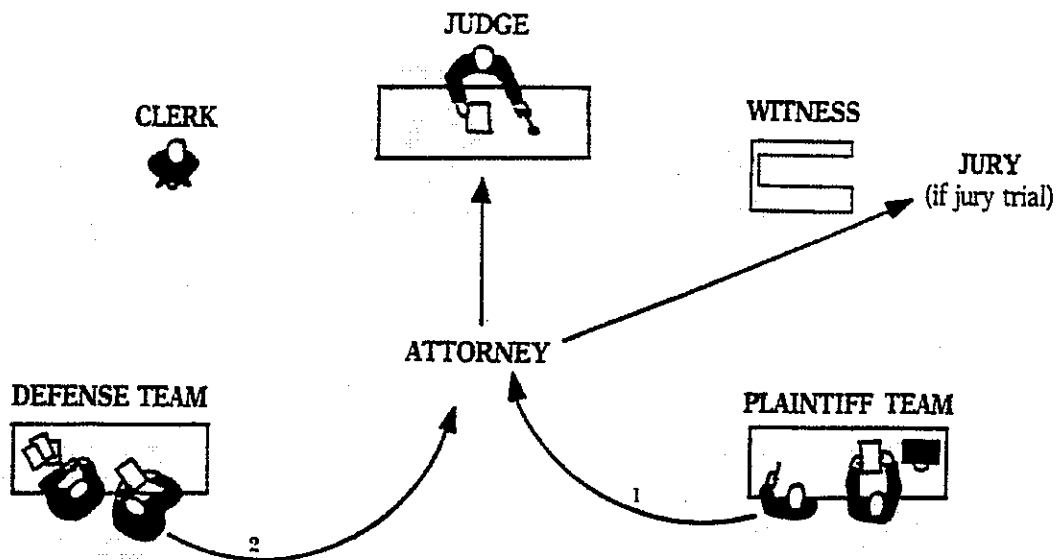
The Closing Arguments

Diagram (at bottom of page) shows attorney (could be either defense or plaintiff's) presenting the closing argument.

DESCRIPTION: The purpose of the closing argument (or "statement") is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for whichever side the attorney is representing. The closing argument should include: (1) a summary of the evidence presented that is favorable to the presenting attorney's side; (2) a summary of the case; and (3) a legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing. New information may *NOT* be introduced in the closing argument.

Style Points:

1. **Plaintiff's Attorney:** Remember, the plaintiff has the burden of proving the facts in a civil case by a preponderance of the evidence. Therefore, the plaintiff's summary of the favorable evidence presented is extremely important. Be sure to avoid claiming evidence that was not, in fact, presented; similarly, do not emphasize evidence that the defense successfully attacked, except to give a firm response to such an attack. Cite the law clearly and correctly, and make a clear argument regarding how the law requires the judge or jury to rule in the plaintiff's favor.
2. **Defense Attorney:** Summarize all of the evidence presented to weaken the plaintiff's case. Emphasize the inability of the plaintiff to meet the burden of proof, and stress that such inability must clearly lead to a decision in favor of the defendant.



Guidelines for the Jury in Determining Guilt in a Murder Case

These guidelines reflect the legal standards used in the Western District of Arkansas in the late nineteenth century. The basis for establishing guilt belongs to that time period, not our own.

In weighing the evidence presented during a trial, a jury must be able to agree unanimously on the following points.

1. A death has occurred and the victim has been positively identified.

The identification of the victim may be through personal testimony of those who knew him or her, or through articles (clothing, papers, natural marks, etc.) found on the deceased which establish identity.

2. The victim's body showed evidence of violence, meaning that the cause of death was not natural.

3. The victim was killed willfully, with malice aforethought.

To meet the standard of willfulness, the jury must find that the victim was killed intentionally. The murder was not an accident.

Malice aforethought denotes doing a wrongful and illegal act in a way which is not justified or mitigated. The action resulted in the taking of a human life for no cause. It must show premeditation, that it was thought of beforehand or planned. Malice is implied from any deliberate, cruel act committed by one person against another, however sudden, as where a man kills another suddenly without any, or without considerable, provocation, and with a deadly weapon

The killing was done without provocation (self defense) and in absence of mitigating facts (manslaughter)

It is not required to find a motive for the crime.

4. The defendant was responsible for the unjustified, premeditated, deliberate action which resulted in the death of the victim.

"First, you are to find whether the man alleged to have been killed is dead, and in passing upon that you are to take into consideration all of these circumstances surrounding it, and whether he was killed in such a way as to make the crime murder. Then when we come to the proposition as to the guilt or innocence of the defendant you are to ascertain whether by the light of this testimony he had the means at hand to produce this deadly result, and secondly, whether he had the opportunity to produce it. Then what are the circumstances of the case pointing to the guilt or innocence of the defendant."

Judge Isaac C. Parker, 1895 jury charge, *U.S. vs. George Wilson*

ROLES IN THE COURTROOM

District Judge: Appointed by the President. Presided over trials. Instructed juries. Sentenced convicted defendants.

U.S. District Attorney: Prosecuted criminal and civil cases on behalf of the United States. Employed one or more assistants.

U.S. Court Clerk: Chief record keeper of the court. Employed assistants that were called deputy court clerks.

U.S. Commissioner: Took complaints, issued warrants, writs and other paperwork, and initiated arraignments and indictments. A judicial district could have numerous commissioners located at different towns. Today this position is called the U.S. Magistrate.

Bailiffs: Attended court while it was in session, waited on grand and petit jurors, maintained order in the courtroom and carried out any other tasks given them by the judge or U.S. Marshal. Usually, more than one bailiff served the district court. A bailiff might also be appointed to serve the grand jury and/or judge.

Court Crier: Announce the opening and closing of court, as well as all cases brought before the judge.

Stenographer: Responsible for keeping a written record of court proceedings.

U.S. Marshal: Appointed by the President. Chief financial officer and law enforcement officer of the court. Usually employed a chief deputy and several deputies to work for him. The primary function of the marshals was to support the federal courts. They (1) served subpoenas, summonses, writs, warrants, and other processes issued by the courts; (2) made all arrests; (3) handled all prisoners; (4) disbursed the money, paying the fees and expenses of the court clerks, US attorneys, jurors and witnesses, including renting the courtrooms and jail space, hiring bailiffs, criers and janitors; (5) took care of details by making sure that water pitchers were filled, prisoners were present, jurors were available and witnesses were on time.

Defense attorneys: Responsible for defending the suspect against the charges brought forth by the government. If a defendant could not afford an attorney, one would be appointed by the court.

Witnesses: Appeared voluntarily or were subpoenaed. A witness was paid \$1.50 a day and 5 cents per mile. Payment was received for both attendance at court and for appearing before the US commissioner.

Jurors: Petit jurors are those that serve in a jury trial. Grand jurors are those that serve on a special jury that determines if there is enough evidence to proceed with an indictment and trial. Alternate jurors serve as replacements if needed. In the 1870s, jurors received \$3 per day and 5 cents per mile. In the 1880s and 1890s this was reduced to \$2 per day and 5 cents per mile. A juror received a summons to appear before the court at a specific date and time. He was to acknowledge receipt of this writ and notice by mail. The list of jurors was also published in the newspapers. Both black and white men from the counties in western Arkansas included within the judicial district could serve on a jury. Women were not allowed to perform jury service, neither were residents of Indian Territory.

OUTLINE OF BASIC COURT PROCEDURES WESTERN DISTRICT OF ARKANSAS, 1875-1896

Person arrested with or without a writ. A crime might be reported to the court officers in Fort Smith or a deputy in the field. A deputy could also come across evidence in the field or witness a crime, then asked for a writ and made an arrest.

Suspect was brought to Fort Smith. Probably placed in jail until Proceedings before U.S. Commissioner occurred. At this time, suspect would plead guilty or innocent. Bail would be set or denied. If denied, the suspect remained in jail. The proceedings determined if the case went before a grand jury or if the charges were dropped.

The grand jury determined if there was enough evidence against a suspect to issue an indictment. If an indictment was handed down, the case went to trial.

The district judge presided over a trial. The case was decided by a petit jury. Defendants were entitled to defense attorneys. These would be provided by the court if the defendant could not afford one. The plaintiff in the cases was the United States, with the case being argued by the District Attorney or one of his assistants.

If the jury returned a guilty verdict, the judge would hand down a sentence. For those convicted of murder or rape, this was the death penalty. For other crimes, the sentence could vary from monetary fines to jail time. Those sentenced to more than a year in prison were transported to facilities in other places: Little Rock, Detroit, Illinois, New York.

IV. Case Files

To encourage the development of critical thinking, presentation and argument skills, summaries of cases, rather than scripts, are provided. Each case file outlines the basic facts of the crime, the evidence presented in court and the arguments of the government and defendants. This is followed by the affidavits of several witnesses for each side. The goal is for students in the roles of attorneys to formulate a strategy based on the evidence and witness statements. Their questioning of witnesses and opening and closing arguments must then convince the jury of the merits of their case. A summary of the historic verdict and sentencing concludes the case file.

This guide provides four case files selected from the criminal cases of the Western District of Arkansas. In order to maintain a high level of accuracy, it was important to use original trial transcripts as the basis for these case files. The Western District did not begin to use transcripts until 1889 when Congress implemented the appeals process. The selection of cases was therefore narrowed to 1889-1896. Each of the case files is also a murder case. Because the focus of "In the Shadow of the Gallows" is executions, the mock trials needed to involve capital cases. In the late nineteenth century, only murder or rape cases were capital crimes in federal courts. Furthermore, if a guilty verdict was rendered, federal law mandated the death penalty. This mandatory death sentence did not change until 1897.

Because of the length of some transcripts (in excess of 400 pages), the information in each case file has been selectively chosen. The number of witnesses have been reduced so that the mock trial may take place within a one hour time period. The witness statements have been condensed but remain true to the words originally spoken in court. Teachers should be aware that some language and trial issues reflect adult situations. They should use the material at their own discretion.

Copies of select trial transcripts are available at Fort Smith National Historic Site. All original material is held in the Southwest Region of the National Archives. See *Section VII: Sources for Further Research*.

The following case files follow:

- A. Shepard and William Busby
- B. Crawford Goldsby, alias Cherokee Bill
- C. Elsie and Margaret James
- D. Jack Spainard

United States vs. Shepard Busby and William Busby

The defendants are on trial for the murder of Deputy U.S. Marshal Barney Connelly. The trial takes place between December 4 and 11, 1891.

For the Government: William H.H. Clayton, district attorney; assisted by Mr. Fannin

For the Defendants: J.C. Byers and T.R. Pitchford

Victim: Barney Connelly, a deputy U.S. marshal. Connelly was described as six feet tall, 175 pounds, "a very muscular, bony, sinewy man." He was somewhere between 37 and 40 years of age. Connelly was a widower at the time of his death and was raising a daughter on his own.

Evidence: Writ for Shepard Busby for adultery, dated August 17, 1891 with bullet holes
Diagram of crime scene
Clothing of victim: pants, overshirt and undershirt (all tagged by Birnie), vest
Three bullets removed from victim
Gun Barrel found at Busby place

Summary of the Government's Argument: Deputy Connelly held a legal writ for the arrest of Shepard Busby on adultery charges and was in the process of trying to make an arrest when he was killed. Connelly did not open fire or threaten the life of Busby in any other way. In fact, Busby wrenched Connelly's gun from him and the officer was killed with his own weapon.

Furthermore, the physical evidence will indicate that Connelly was struck over the back of his neck. This blow broke his neck and possibly incapacitated him before gunfire erupted. William Busby must have struck Connelly over the neck. The father and son then disarmed Connelly and shot him to death. If this was self defense as the defendants will claim, why was it necessary to fire four shots at Connelly?

Summary of the Defendants' Argument: Connelly did not identify himself as an officer of the law, leaving Busby to wonder who he was and what he wanted. After the first shot wounded Shepard, a struggle ensued where Busby gained control of Connelly's gun. Busby demanded that Connelly identify himself and his purpose but Connelly did not do so and continued to moved toward him. At that point Busby fired in self defense, killing the officer. William Busby had nothing to do with the commission of this crime.

FOR THE GOVERNMENT:

G.S. White

White is a deputy marshal and court bailiff for the federal court. He resides in Fort Smith. He knew Connelly and rode with him quite often

Connelly left my house on Tuesday morning, August 18, 1891 to go over to the Cherokee Nation to arrest Shepard Busby. I saw the writ he had for this arrest. I also took this writ out of his pocket when he was killed, and saw these bullet marks there. (*identifies writ with bullet holes*)

I learned of the killing between 1:00 and 2:00 on the 19th. The marshal directed me and some others to go out after the body and see what was the matter. I found the body of Connelly lying in the yard at Busby's place. Shepard Busby was gone but William was there with two women--Tennessee (Tenny) Burns and Florence Jones.

When I first went up to him he was lying pretty well on his back with his right leg drawn up, and his right hand thrown back in this way (*showing*) and his head turned off to the left this way (*showing*). I looked at his head and saw it was all black and blue under the left side. This area was about three fingers wide. I tried to straighten it up but it wouldn't stay; it just dropped back. I did not see the wounds in the body at that time, only the clothing. (*identifies Connelly's pants and overshirt with tags from Birnie's*) I saw the wound in his arm and one in his right breast. I saw a wound here (*indicating*) through his vest and pants. I just saw it on the outside.

I brought the body back here to Birnie's. Mr. Birnie called my attention to Connelly's neck and we decided his neck was broken. I had the body embalmed and shipped to Siloam Springs.

Dr. Joseph T. Klegg

Klegg is a physician and surgeon from Siloam Springs, Arkansas. He had known Connelly for thirteen years. He has been practicing medicine since 1873.

I made a post mortem exam of Connelly on August 23 at the request of the U.S. Marshal. It was four days after Connelly's death and we had to disinter him. I found 3 bullet wounds in the body and obtained the bullets. (*produces bullets*) Connelly had wounds at his right forearm, the right side of his chest and his abdomen. The wound in his chest went through the center of his heart.

I found a bruise on the back of the neck and found that his neck was broken. This was not done by a bullet. My opinion is that the injury to the neck was caused by something like a heavy, small, smooth instrument, perhaps a gun barrel, rod of iron or a very heavy billet of wood, or else it was done by a wrench of some kind, as though his neck could

have been caught into something-and given a twist. *(shown the gun barrel, says that it could have caused the injury)* I would consider the gunshot wound to the heart, wound to the abdomen and the broken neck all fatal. I do not know which one occurred first. The neck injury could not be produced by a man falling backward and striking his head or neck on an instrument. It would require much more force than the average weight of a body. A man falling from his feet with no force but the weight of his body would not break his neck. It would be absolutely impossible to break it in such a manner as I found in this case.

Silas Andrew Satterfield

Satterfield owned the land where Busby was living at the time of the killing.

Connelly was at my place around 9:00 or 10:00 with Dr. Woods. Connelly summoned me to go with him to Busby's. I said I didn't want anything to do with it but I finally went. I left Connelly and Woods on a small hill about 350 yards from Busby's place. I went to Busby's alone to see if he was home. Busby was lying down in the yard on a pallet. His son and a couple of women were there also. I told Busby I was hunting some horses. He said he hadn't seen any and I rode off. I found Connelly with Dr. Woods. Connelly said he would go to Busby's house and arrest him and if he was unruly he would fire his pistol as a signal and we were to come and help arrest him.

Connelly was gone about 10 or 15 minutes when the first shot was fired. There were four shots in all. We waited for Connelly to come back. About a half hour after the shots, I saw William Busby coming toward where we were. I went down to talk to William and he asked me if I heard the shooting scrape that morning. I told him no, that I heard some guns fire but didn't pay any particular attention to it. He said his pa had got into a difficulty that morning. He said a man rode up inquiring about some horses. When this man got off his horse, he threw his pistol in his father's breast and told him to give up. William said his pa pushed the man back with one hand, caught the pistol with the other and wrung it out of his hands. Busby shoved the man back three times, asked him what he meant and who he was. William said the man kept advancing on his father and his father shot him. After we finished talking, William continued on his way.

Dr. Woods and I came to Fort Smith to report this. Eight or ten later I searched around the Busby place and found a gun barrel under some brush and a piece of quilt that lay in the yard. I took it to be a musket barrel, Enfield Rifle Barrel. It was plugged up in both ends. *(identifies gun barrel)*

Dr. R.M. Woods

Woods is now living in the Sequoyah District of the Cherokee Nation. At the time of the murder, he lived about a mile from the Busby place. Woods was once a private in the U.S. Army.

Connelly came to my house about sunrise on the day that he was killed. He told me he had a writ for Mr. Busby and that he wanted to locate him. We went to Satterfield's together. He got Satterfield to go to Busby's to see if he was home. Satterfield met us on a hill south of the house and told Connelly that Busby was there. Connelly got right up on his horse, bid us goodbye and went to Busby's house. We had an understanding that if Busby was unruly, Connelly would fire his pistol off once to let us know and for us to come.

After about 15 or 20 minutes we heard gunfire toward Busby's house, four shots total. We waited at least an hour for Connelly to come back. Then we saw William Busby coming down the road. Satterfield went to talk to him. After that, Satterfield and I went to Fort Smith to report the matter.

In November of 1890, I had a conversation with the defendant. We were on our way to Van Buren at the time. Shepard Busby told me that he and Tennessee Burns were going to have a child and that he was going to marry her. He also said "I expect to get into trouble and if I do, I will kill the first damned man that tries to arrest me."

I was present when a gun barrel was found at the Busby place. It was found in a brush heap under some leaves and brush with piece of old quilt over the top. (*identifies the gun barrel*)

Alonzo Williamson

Williamson has lived in the Cherokee Nation, about 2 1/2 miles from the Busby place, since 1886. Louiza (Bolin) Busby, Shepard Busby's wife, is his step daughter but she is not living with Busby. Louiza, age 22, was living at Williamson's house at the time of the murder.

In the latter part of July 1891, Shepard Busby passed by my place. My wife and I were standing at the well when he came up. I told him that the marshals had been to my home to talk to Louiza about getting out a warrant for him. He just said: "They can persuade her to come here and get out a warrant for me if they want to, but I will kill the first God damned man that undertakes to arrest me."

FOR THE DEFENDANTS:

Florence Jones

Jones lives in the Cherokee Nation on Big Lee's Creek. She lived at Mr. Busby's house at the time of the murder and now lives at Irvin Marshal's. She is 15 years old and engaged to be married to Shepard Busby once he gets a divorce from his wife. Prior to living at Busby's place she lived with her mother but left there because she could not get along with her stepfather.

When Mr. Connelly rode up he said "Good morning" and Mr. Busby said "Good morning." Connelly said "I lost a sorrel horse at Siloam Springs and I would like to get you to help me to look for him." I was about 15 feet from them at this point, sewing. William Busby and Tenny Burns were also there. Connelly got down, hitched his horse and came into the yard. Then he drew a pistol with an oath, threw it at Mr. Busby's breast and said "God damn you." Mr. Busby grabbed the pistol by the muzzle and as he grabbed the pistol, Connelly fired at Mr. Busby. Then Connelly threw his arm around Busby's neck. Mr. Busby then wrung the pistol out of Connelly's hand and pushed him back and said "Who are you, what do you want, and what do you mean." Mr. Busby asked him that three times but Connelly made no answer, only kept trying to get to him. Connelly had his hand back behind him like he was going for another revolver but when he was shot he did not have a pistol in his hand. Mr. Busby shot him four or five times. Connelly fell backward at the fourth shot. After Connelly was shot Mr. Busby told Will to go tell Mr. Boyd about him killing this fellow. Will never did anything to assist his father in the shooting. Connelly never said he was an officer or that he had a warrant

Tennessee Burns

Burns had been living with the family of Busby for nine or ten years. She started living with Mr. Busby when she was twelve and orphaned. She is now twenty-two. Although not married, she has two daughters by Mr. Busby, one age five and the other eleven months.

The morning of the murder, Mr. Busby, William, Florence and I were sitting in the yard. Connelly rode up and said "Good morning" and Mr. Busby said "Good morning, sir." Connelly said "I am looking for a sorrel horse and I would like to get you to go with me and help look for him." Mr. Busby said "Where did you loose him at?" and he said "Up there by Siloam Springs." Mr. Busby said "Well, get down and come in." He got down and hitched his horse and then threw a pistol in Mr. Busby's breast with an oath--God damn you. Connelly never told Busby to give up. Mr. Busby grabbed the muzzle of the pistol and shoved him from him and the pistol fired. Connelly fired the first shot. Busby got his thumb shot. Connelly threw his left arm around Mr. Busby's neck and Mr. Busby threw his right arm around Mr. Connelly's neck and they scuffled there I reckon two or three minutes. Mr. Busby then wrung the pistol out of Mr. Connelly's hand and shoved Connelly from him about two or three feet and asked him what he was doing, what did he mean, what did he want. and who was he. Connelly never made any answer, still kept

trying to get on to Mr. Busby like he was going to kill him. Connelly kept feeling back like he was going to get another pistol out of his pocket and Mr. Busby shot him four or five times. Connelly was not armed when he was shot. Connelly did not fall on a chair; he just fell on the ground. No one struck him. I don't know how Connelly got his neck broken.

I know Connelly fired the first shot. Busby fired four or five. Connelly was not armed when he was shot. Busby told me that Mr. Connelly rode up and he didn't know who he was and he said that he thought it was a mob sent there to kill him. Busby heard that old Woods got out a writ for him.

Shepard Busby

Shepard is a defendant in this case. Born in 1833 in Kentucky, he served the Union during the Civil War and is a member of the Grand Army of the Republic. He was formerly a deputy U.S. marshal for about a year.

When Connelly rode up on the morning of the 19th of August, I did not know who he was. He rode up and said "Good morning, Mr. Busby" and I said "Good morning." He said "I have lost a horse and I want to get you to go with me to hunt the horse." I said "Where did your horse get away from you?" He said "Siloam Springs." By this time, he had walked up to a few feet of me and then he jabbed his pistol at me and said "God damn you." His being to my left, I grabbed the pistol with my left hand and pulled down on it. He threw his arm around my neck and jerked me up to him. I grabbed the pistol and as I did so, it fired. He had his arm around my neck, and I was trying to get it away. I wrung the pistol out of his hand, and shoved him back. I jumped back myself and said "Who are you, what do you mean, what in the hell do you mean." He just looked me right in the eye. He stepped toward me and I stepped back. I just raised the pistol and fired. He stepped again and I didn't know whether I had hit him or not. I just cocked the pistol and kept shooting as long as there was a load in it. I don't know how many times I shot. The last time he sort of careened back as I fired and fell right over backward.

I kept shooting because he advanced and would not give me any answer. He seemed to be determined to spring at me and get the pistol or get some other pistol. I was not going to stand there and wait some ten or fifteen minutes to see if that man was going to advance on me or not; these shots were all fired as quick as I could fire them. I fired the first shot and stepped back and fired the other shots as fast as I could. At no time did Connelly identify himself as an officer. He did not ask me to consider myself under arrest. I did not know that there was a warrant out for me.

I thought that Connelly was a member of a mob. About a month before the killing, I learned that an effort was being made to have me indicted for adultery. I had been told that Woods and Satterfield had been there at different times to try to get to my wife to swear out a writ against me. Dr. Woods also charged me with milking his cows which I

did not do. My enemies are Woods and Satterfield. Mr. Woods had been to Fort Smith with Mr. Satterfield several times telling tales against me to the chief marshal.

I was a deputy for about a year but never knew Barney Connelly. I don't know how Connelly got his neck broken. He fell on the ground, not on a chair or a bucket. Will did not help me in this fight. I never told anyone that I would kill any damned marshal that would attempt to arrest me.

William Busby

William, a defendant in this case, is the son of Shepard Busby. He is 23 years old and lives in the Cherokee Nation but does not make his home with his father. He works as a farm hand at various places.

On the morning of the killing I was setting out in the yard playing on the fiddle. Florence Jones, Tennessee Burns and my father were there also. I heard a horse and a man rode up and said "Good morning, Mr. Busby." This man, Connelly, said "Mr. Busby I have lost a horse. I would like to get you to help me look for it." Pa said "Well, get down and come in." He got down off his horse, hitched it to the fence and walked right up to pa. He pulled the pistol on him and said "God damn you!" Pa grabbed the pistol and they tussled around there. The pistol fired while they were scuffling. Pa got the pistol away from him some way and shoved him back a little piece. Pa stepped back and drew the pistol and asked him what he wanted. Pa said "What do you want, who are you, what do you mean." The man never made him any answer. He kept moving toward Pa and Pa shot him. They were about ten feet apart when the first shot was fired. I don't know what broke Connelly's neck. He did not fall on the chair or a bucket, did not fall on anything that I could see.

After the shooting, Pa told me to go down the road to find Mr. Boyd and tell him to come to the house. Pa wanted to know who the dead man was. I saw Mr. Satterfield as I was going to find Boyd and told him what happened.

For Teachers Only: A Summary of the 1891 Verdict and Sentence

Shepard Busby was convicted of capital murder on December 11, 1891. He was sentenced to death on January 21, 1892 and executed on April 27, 1892. On the gallows, Busby claimed that he had been convicted through malice and that his son, William, was wholly innocent and had nothing to do with the killing.

William Busby was convicted of manslaughter and sentenced to ten years in the Detroit House of Corrections.

United States vs. Crawford Goldsby, alias Cherokee Bill

Goldsby is on trial for the murder of Lawrence Keating, a guard at the U.S. jail in Fort Smith, on July 26, 1895. Goldsby had been convicted of the murder of Ernest Melton and sentenced to hang for that offense. He appealed the decision in the Melton case to the U.S. Supreme Court and was awaiting the decision when Keating's murder occurred. Goldsby's trial takes place between August 8 and 10, 1895.

For the Government: James B. McDonough, assistant district attorney

For the Defendant: J. Warren Reed

Victim: Lawrence (Larry) Keating, a night guard at the U.S. jail. Keating, a native of Ireland, had lived in Fort Smith for most of his life.

Evidence: Diagram of the interior of the jail
Letter written by Cherokee Bill for Ben Duff

Summary of the Government's Argument: An eyewitness to the crime, R.C. Eoff, will testify that he saw Goldsby shoot Larry Keating. The U.S. jailer will testify that Goldsby confessed the crime to him and explained why he tried to escape from the jail. A final witness will verify the death of Keating and that he had not drawn his weapon when the shooting commenced. The government will also introduce a letter written by Goldsby that shows he intended to kill a guard.

Summary of the Defendant's Argument: Witnesses will testify that Goldsby was not in his right mind in the days leading up to the murder. The prisoner in the cell next to Goldsby's will testify that he saw the shooting but did not think that Keating was shot or hurt in the incident.

FOR THE GOVERNMENT:

R.C. Eoff

Eoff has served as a turnkey at the U.S. Jail for a little over two years. He is responsible for locking and unlocking the bottom floor of cells.

It was Mr. Keating's custom to accompany me when I locked up in the evening. He was on the outside of the bars and I was on the inside locking the cells at night. Goldsby's cell is on the west side, the third from the south end. I locked the east side of the jail on the bottom floor, and turned the corner to the west side, and locked the first cell, and the second cell there was something wrong with the lock, some paper or something in it, and I called the attention of Mr. Keating. He stepped a little further around in order to see me, and as he did that he was in front of Cherokee Bill's cell. Cherokee Bill rushed out with his pistol in his hand and commanded Keating to throw up his hands, or he would kill him and to give up the pistol, too and just as he made his remarks he fired. And then he lowered the pistol and pulled it back from the bars, lowered a hole or two lower in the bars and commenced firing at Keating again. I don't know how many more shots he fired at him. I saw Mr. Keating stagger backward and throw out his right hand as though he was going to take hold of the radiator against the brick wall. That is the last movement I saw out of Mr. Keating.

At that point I ran back around to the east side and to the front entrance. Cherokee Bill shot at me twice that I know of. I was not armed. I protected myself as much as I could by getting up and standing in the cell door. There is a recess in the cell door about four inches and I stood with my heels on that step there and held back to the bars of the cell door until they came with the keys from up to the office and unlocked the door and let me out.

About two or three weeks before the murder, we had information that there were two pistols concealed in the jail and we made a search. We found one pistol in a bucket of wet clothes in the bathtub in the back of the building. Cherokee Bill's cell was searched

J.D. Berry

Berry has been the U.S. jailer since November 1, 1894. He currently has 181 prisoners in his charge.

I was at home when I first learned of the trouble at the jail. I rushed over there and found the jail yard full of people. I went into the jail and remember that they had Cherokee Bill disarmed and were trying to get him to come out of his cell. He saw me and said that he would come out if I wouldn't let them shoot him. He told me that evening and again the next morning that he wouldn't have killed Keating if he had thrown his hands up. I asked him "Bill, what on earth did you want to kill Larry for?" He said, "Well, he wouldn't throw his hands up." Cherokee Bill did not know whether he had hit Keating or not. He said he shot two or three times. Cherokee Bill said he had nothing against Keating. He might have said that he did not want to kill him. I don't remember. Cherokee Bill did

make a remark that he wanted his liberty, and damn a man that wouldn't want it or wouldn't try to escape if he had a chance.

William McConnell

McConnell has served as a day guard at the U.S. jail for over two years. He makes his home in Clarksville, Arkansas.

I was outside the jail, about 20 feet from the door, when the firing commenced. As I ran into the main entrance of the jail I saw Keating fall. I ran to him and turned him over. I raised him up and spoke to him and asked him if he was badly hurt. He mumbled something but I did not understand it. I saw there was no help for him and I just turned him over and laid him down. Keating's pistol was still in his scabbard and had not been fired.

FOR THE DEFENSE:

Ben Duff

Duff has been a prisoner in the jail for two or three months. He is charged with murder. At the time of the shooting, he was in a cell on the east side of the first floor.

Before the shooting, Cherokee Bill would not talk with any sense. When a fellow would talk to him he would just say yes or no and go on. If anybody would come to see him, he would run in his cell and lay down. Sometimes he would stand and look at them, just wouldn't talk and sometimes wouldn't look at them. He didn't seem to be right in his mind for the last three or four days before the shooting. I don't think if he had been he would have done what he did that night.

I can't read or write, so I had Cherokee Bill write me a letter. This was a couple of weeks before the shooting occurred. I didn't know what was in the letter because I can't read or write. The letter was sent to Kirk Barnes in the Coo-wee-scoo-wee district of the Cherokee Nation.

Will Mitchell

Mitchell has been in jail since about May 1, 1895 on charges of obtaining a letter through false pretenses. At the time of the shooting, he occupied Cell #6 on the first level on the west side.

About three or four days before the shooting, Cherokee Bill acted kind of queer. He would look at a man and he would look right wild and if anybody would come to look at him he would go in his cell part of the time and try to hide himself and other times he would just come out and pay no attention to them. He must have been wrong in his mind or else he never would have made the attempt he did when there is twice as many guards there as any other time of day or night when they are locking up because the night guards are there and the day guards too. It didn't look reasonable that a man with good sense would ever have made an attempt at that time.

Andrew Jackson

Jackson is 84 years old. The son of a slave, he was raised by Andrew Jackson in Tennessee. He is in jail on charges of horse theft. On the night of the shooting he was in Cell 22, the one next to Cherokee Bill.

At the time of the shooting I was sitting in the chair right in front of my cell door looking out on the aisle. I was about four feet from Keating and had to look through two sets of bars (cell door and outer bars) to see him. Cherokee Bill started the shooting. He came out of his cell, put his pistol through the grating and shot right across the aisle into the wall. I heard Cherokee Bill tell Keating to throw up his hands before he started shooting. Keating was standing with his right hand on the grating. The shots would have missed Keating by at least a foot. I do not know if he hit Keating. I do not hardly think he did. I could not say positively whether he did or not but I hardly think he could have hit him

from where he was standing. Keating threw up his hands when the shot hit the wall and brick flew up and struck him in the face. He then ran up the aisle and he struck himself against the heater. At that point, he turned about one half about face and as he did that he made for his gun. He didn't seem to be hurt to me. Keating whirled again and ran right on up the aisle. Cherokee Bill made three shots at his cell door and then ran around the jail and holloed and when he got on the east side of the jail I heard some more shooting there. I don't know if it was him or someone else but when he came back he shot up toward the top of the jail.

Mrs. Mary Berry

Berry is the wife of the U.S. jailer. She frequently visits the jail and its prisoners.

I tried to see Cherokee Bill on the Sunday afternoon before the shooting occurred on Friday. I got to the jail that afternoon about half past three or four o'clock. I met a friend that was very anxious to see Cherokee Bill, but when we got down in the jail he had a misquito bar before his cell door. I called to Cherokee Bill, and asked him to come out. He said he didn't want to, that he didn't have time. I said, "You have acted so nicely ever since you have been here. I never have brought anyone here before that you would not let them see you. Are you going to break the record now?" I told him to come out and he refused again. My little daughter, eight years old, was with me, and she stopped there a little bit and she asked him to come out. He seemed mad and sullen and said "If I had a pistol I would kill somebody." It frightened me. I felt real uneasy that Cherokee Bill seemed so sullen and morose. I think he was certainly sane but I thought he was then in a mood to hurt someone that afternoon and had expected it through the week from his conduct.

For Teachers Only: A Summary of the 1895 Verdict and Sentence

The jury returned a guilty verdict against Goldsby after thirteen minutes of deliberation. Judge Isaac C. Parker sentenced him to hang on September 10, 1896 but the case was immediately appealed to the Supreme Court.

Meanwhile, the Supreme Court upheld the guilty verdict in the Melton case and Parker fixed the date of execution as March 17, 1896. Approximately 3000 people attended the hanging of Cherokee Bill on that day.

Letter written by Cherokee Bill for Ben Duff

"U. S. Hell, Fort Smith, July 18, '95.

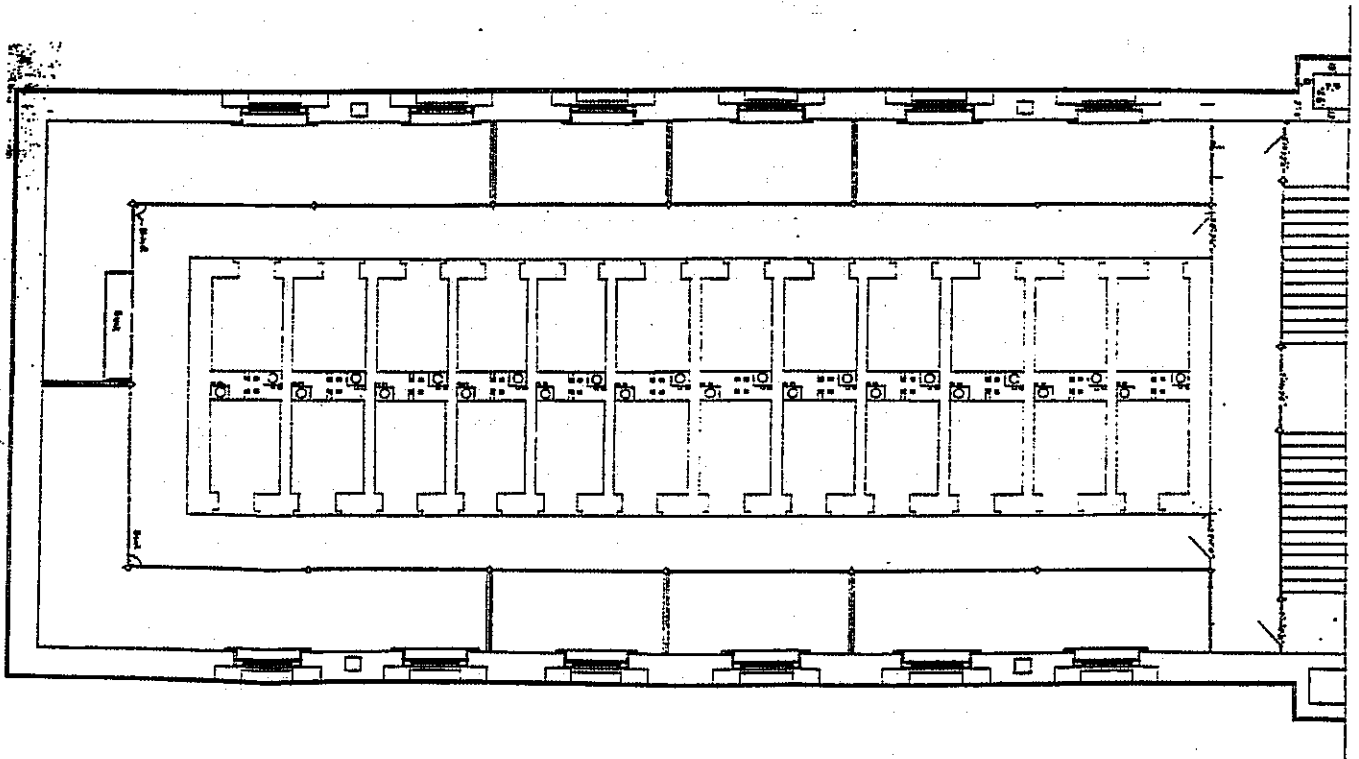
"Mr. Curk Barns. i rite you a few lines to let you no i well and hope this will find you the same. Well, Curk, i shiped 32 head on 17th of july. I i hant had no answer. i dont no what that tho will Bring but i loking for your prise a Bout 25 cents a head. i got about 150 one hundred and fifty for next term. i will tell you our dyiet. it is for Breakfast first it comes 9 sharp A.M. corn cack rice and rat shit. sec. diner 4 P. M. sharp. no supper. we still git our corn cack for Meat and our coffee is named as kill quick and our corn bredd is _____ as Wage Ass and syrup is Black as sail and mark u. s. prisoners as same as did kid you hear of any Big game. we had a 45 full but we run up agant seekns flush _____ it is hot as hel and still a hoten and cant think of no more hopen to her from you son from your frend Ben Duf. i sneek this letter out by Will Rail. we cant giv nothing like this out of the _____. ex pleas excuse Bad writing.

(Then follows a rough representation of a person, at the top of which is written in Capital letters, CARD, and at the bottom of which "OAF IS HIS NAME.")

The letter then, on another page, continues as follows:

"Curk, I want you to goe over to old man Martns and mark my white hofer calf and Brand it in your mark as son as you git this leter and if you can i like for you to com down i like a talk with you. we hab to whip to whip a gard every day and next weakwe air going to kill one _____."

Diagram of the Interior of the Jail



Draft
Mock Trial Materials

United States vs. Elsie James & Margaret James

Elsie and her daughter Margaret are on trial for the murder of William Jones, a white tenant farmer who lived at the James' house in the Chickasaw nation. The murder occurred July 3, 1887. The first trial of Elsie and Margaret James occurred January 12 through the 15th, 1889. That trial resulted in a hung jury. The second trial occurred from March 15 through the 20th, 1889. This mock-trial material is drawn from the second trial.

For the Government: C. M. Cooke, assistant district attorney.

For the Defendants: Du Val and Cravens, and Marcum and Grace.

Victim: William Jones, a tenant farmer living at the James' house.

Evidence: Diagram of the layout of the house.
 Human skull fragments.

Summary of the Government's Argument: Elsie James killed William Jones. She buried the body and told people that Jones had gone elsewhere looking for work. By October, neighbors began to wonder what had happened to Jones. Elsie and her daughter were brought into the town of Stonewall and questioned. Elsie admitted to killing Jones in self defense, when he attacked her with a knife. Margaret told them where the body was buried. It was buried in the direction she specified. After her arrest, Elsie accused Zeno Colbert of the crime.

Summary of the Defendants' Argument: Jones was actually killed by Zeno Colbert, a Choctaw or Chickasaw of bad reputation. Jones was attacking Elsie with a knife and Zeno shot and killed him. He threatened to kill Elsie if she told anyone that he had killed Jones.

Witnesses reported to be dead: The following people are mentioned in testimony, but when the witnesses are questioned about them, they are reported as dead.

Zeno Colbert: the Choctaw or Chickasaw Indian accused by Elsie James of killing Jones.

Bond Underwood: According to Elsie, he was out to get her land.

Frank Frazier: According to Elsie and Margaret, he came by the day after the murder, and took the body away for burial.

The Story: William Jones appeared in the Chickasaw Nation in February, 1887. He showed up at the home of John Adkins looking for land to rent for farming. He could not speak Chickasaw, and needed an interpreter. John Adkins could speak Chickasaw, and took Jones to the home of Elsie James, who is either Choctaw or Chickasaw. They worked out an arrangement where Jones would live at Elsie's house and farm her land. He would keep one-third of the crop, and Elsie would get two-thirds. Some time after July of 1887, people began to notice that Jones was missing. Elsie told people that Jones had spoken about going elsewhere to look for work. In October, John Surrell, a

resident of the town of Stonewall was concerned enough that he brought Elsie and her daughter Margaret in for questioning. Daniel Harrison, a store clerk, interpreted for Elsie. She admitted that she killed Jones in July, when he attacked her with a knife. She was afraid to tell anyone, but had planned to report the incident in Fort Smith, whenever she could find someone to take her there. She and Margaret took Surrell and others out to her farm, and Margaret showed them where the body was buried. The body was so badly decomposed that no one could identify it. The head was broken into pieces. Surrell sent off for Marshals Thomas and Stokely. When they arrived, Elsie and Margaret were arrested and taken to the cabin of George Stout. John Adkins interpreted for Elsie. She again admitted to killing Jones when he attacked her. Elsie and Margaret were then taken to Tanda Walker's house. Sampson Alexander, a lifelong resident of the Chickasaw Nation (perhaps an Indian), interpreted for Elsie. Elsie now said that Zeno Colbert, a Choctaw or Chickasaw Indian, had committed the murder. Zeno was brought in, and Elsie accused him of the murder. He denied killing Jones. Elsie claimed that Zeno had threatened her and that she had stayed quiet until Zeno could be brought into custody.

Notes to Teachers

This case has been simplified to take out issues that might be confusing for students. Witnesses have been left out, as well as unsubstantiated testimony. The edited portions are outlined below, and can be included, if the teacher so desires.

Other witnesses for the government:

Susanna Alexander: A Choctaw, she lived less than two miles from Elsie James. She claimed to have seen Zeno Colbert leaving Elsie's house early on the day that Jones was killed. She had dinner and supper at Elsie's house. When she left that evening, she was about 150 yards from the house when she heard gunfire. She did not go back to check on it. When she saw Elsie a few days later, Elsie told her that Jones had gone away toward Texas looking for work. At the time of the trial, Susanna's common-law husband was in jail for stealing Margaret James' horse.

John Huggins: Practiced medicine in the town of Stonewall. He was also the Post Master in 1887. The day before the murder, Jones had come into Stonewall to pick up a registered letter. Huggins believed there was money in the envelope. He did not see Jones take any money out of the envelope, but he did see money in his hand, at least a twenty-dollar bill and a five-dollar bill. Jones bought a new pair of shoes and some tobacco. When Elsie and Margaret were brought into Stonewall for questioning, Huggins spoke with Margaret through an interpreter. Margaret told him that her mother had killed Jones and that they buried him in the garden. Huggins was part of the group who accompanied them back to the house, where Margaret told them where the body was buried, and what direction the body was laid out. Huggins helped uncover the body, but did not recognize the clothing, and the body was too decomposed for identification. One pocket on the pants appeared to have been cut away, and tobacco was found in another pocket.

Other Witnesses for the defense:

Stephen Alexander: Sampson's brother, and Susanna's common-law husband. He claimed to have seen Zeno Colbert at Elsie's house just after sun-up on the day that Jones was killed. He was there for dinner, and said that Zeno was also. That evening, he was about a mile from Elsie's house and he heard three shots from that direction. He went to Elsie's house for breakfast the next day and asked Elsie about the shots. She said that there were some drunken fellows who had come around shooting their guns. He never heard Elsie accuse Zeno until that day at Tanda Walker's house. Elsie had told him that Jones had gone to Cherokee Town to hunt work. Alexander claimed that Zeno was now dead and that he had helped bury him.

Testimony not included:

Money and shoes: The day before he was killed, Jones went into Stonewall to pick up a registered letter. The Post Master saw him with money, but did not know if Jones had received it in the letter. Jones bought some tobacco and a pair of shoes. Lucy Underwood claimed that, after Jones was killed, Elsie, Margaret, the children and her went away to the Canadian River. Elsie sold some shoes to a Seminole Indian. Elsie admitted to selling some shoes, but they were partly worn, and had belonged to her late husband. Some shoes were found in the garden where Jones was buried, but they could not be identified. The body that was dug up was not wearing any shoes.

Elsie's property and the lawyers: The prosecution tried to make a case that Elsie had turned her property over to her lawyers, and that they were trying to get her land. Elsie admitted to turning property over to Tanda Walker so that he could hire lawyers for her because she did not know who to get for a lawyer. She also wanted Tanda to hold onto her property because she was afraid Bond Underwood would try to get her land. Tanda testified that the attorneys were taking care of the property and that he had only taken money from Elsie for taking care of the stock.

Elsie in need of money: The prosecution tries to make the case that Elsie murdered Jones for the money he received in the registered letter. They claimed that she needed money. John Adkins admitted to borrowing money from Elsie and that he had trouble paying her back. He made it sound as though Elsie was in desperate need for money and was trying to get money back from people who had borrowed from her. Others testified to her being well off, having a nice house, livestock, and constantly having people over for meals. John Adkins testified to her nice house, cattle, and her being well off. Daniel Harrison testified that Elsie was pretty well to do, with plenty of cattle, horses and hogs. He also spoke of how neighbors frequently came to her house.

Stains on floor: There was some testimony about whether stains seen on the floor at the house could be bloodstains, but nothing was determined. There was also speculation about what could have been used to break Jones' skull, but nothing was determined there either.

The Trial

For The Government:

Lucy Underwood (examined through an interpreter)

Lucy is a Chickasaw who lived with Elsie James. She did chores for Elsie.

Elsie sent me to the creek to fetch water. At the house were Elsie, her daughter Margaret, Margaret's son Mack, and William Jones. Jones was eating at the table in the hall. Just before I got to the creek, I heard three shots. When I got back to the house, Elsie was standing at her bed room door, Margaret was at the kitchen door, and Jones was lying dead on the floor in the hall. A butcher knife was lying close to him. There was blood on his forehead. Elsie's pistol was lying on her bed. They left the body there that night and Elsie took it away in a wagon the next morning to bury it.

John Adkins

Lived in the Chickasaw Nation, three miles from Elsie's. Acted as interpreter for Jones when he first came looking to rent land. Interpreted for Elsie when she was arrested.

Jones first came to me in February of 1887, looking to rent land for farming. I went with him to Elsie's place and acted as interpreter. Elsie had one of the best places in the Chickasaw Nation, and one of the best log houses. Her husband (Martin) died just after Christmas in 1886. They owned the property, were pretty well off, had plenty of cattle and lived well. The situation she worked out with Jones was that she would furnish teams and plows for Jones to do the work. She would get two-thirds of the crop and Jones would get one-third.

I last saw Jones the first Sunday in May of 1887. I had gone to Elsie's to pay back some money I owed her. I did not have it all. I told her I would work for her gathering corn to pay back the rest. I went to Elsie's in August because she had a fence that needed fixing to keep the livestock out of her garden. I asked if Jones was ready to gather the corn and she told me that he was not there but had been talking about going off and hunting a job. She said a lot of people had been there one Sunday and, that after they had all got through eating dinner and gone, Jones left later that evening or during the night.

When Elsie and Margaret were arrested, they were taken to George Stout's cabin for questioning. Heck Thomas and John Surrel were there. They sent for me to interpret. Elsie told us that she had killed Jones. He had run at her with a butcher knife and she killed him. She said she shot him once. Margaret told us the same story. Both of them said that Elsie had buried him. Margaret told me that she had intended to report about the killing to the Court at Fort Smith but she was afraid to tell it until she had the protection of the Court.

John Beatty

Lives in the Chickasaw Nation. In 1887, he was running a mill around two miles from Elsie James' home.

On the third of October, 1887, I helped investigate the disappearance of William Jones. I did not hear the conversations at Stonewall, but was at the house when Elsie told Margaret to take us to the body. There were other graves there. There were rocks all over the body, which was buried about 16-18 inches. The body had on a shirt and a pair of pants. There were no shoes and no hat. I picked up most of the pieces of the skull, put them in a box and brought them back to Fort Smith. I went back with Ed Stokley and Heck Thomas about three to four weeks later to make further investigation. The rest of the bones were taken up at that time and brought to Fort Smith.

Daniel Harrison

A Chickasaw Indian. Clerk in a store at Stonewall. Has known the defendants for over ten years. He only saw William Jones once, when he was in the store.

I interpreted between Elsie and John Surrel when they asked me to in October of 1887. When I asked what had become of Jones, Elsie said she did not have to tell it there, that she was going to Fort Smith pretty soon and she would tell it when she got there. I told them I had to get back to the store, and if they wanted to talk more they could follow me there. They did. Elsie and John Surrel came in and we went to the back room. Elsie told me then how she had killed the man. He had run after her with a knife and Margaret yelled to warn Elsie. Elsie then ran into her room and got her pistol out from under her pillow and turned around and shot him. She said that she buried him, in the cellar area of an old house site.

Surrel told me to tell Elsie, if she would come and tell all about it, that he would do all he could for her and that it would be better for her. He told me to tell her that he was the best friend she had and that he would help her out of it if she would tell how it was. That was all before she made any statements. Margaret heard all of that.

I also knew Zeno Colbert. He was a full-blooded Chickasaw, about 24 or 25 years old. He carried a Winchester all the time. He had no real home, just wandered around a lot.

Elsie was pretty well to do. She had plenty of cattle and horses and hogs. Her neighbors frequently came to her house.

Sampson Alexander

Lifetime resident of the Chickasaw Nation. Has known the defendants about fifteen years.

In October of 1887, Bond Underwood and I were out hunting horses and came across Margaret and two children riding horseback. She told us that her mother had killed William Jones. I do not know if this was before or after she went to Stonewall to answer questions.

When Elsie and Margaret were arrested and taken to Tanda Walker's, I was sent for. They brought me to the Marshal's camp outside the Walker home, and left me by the wagon. Elsie came up to me and told me in Chickasaw that she had done laid it on Zeno Colbert. She wanted me to swear that Zeno had killed Jones and that I had seen Zeno with \$60. She told me that she would pay me to swear this. I told her that I could not do that. Margaret was about four or five steps away from us. Elsie went away, and I went and told John Surrell what she had told me. I went with Heck Thomas and we arrested Zeno Colbert and brought him to Tanda Walker's. They got me to interpret. Elsie said, in front of Zeno that he had killed Jones. She said that he shot him twice and then hit him over the head with his Winchester. Zeno said that he did not do it. I have heard that Zeno is dead.

John R. Surrell

A licensed trader. He sells goods and deals in cattle in Atoka, Choctaw Nation. Has known the defendants for fifteen to twenty years. He goes to Elsie's house at least once a year to buy cattle.

I never met Jones. I heard about his death and I sent Beatty out to Elsie's to tell them that I wanted to see them in Stonewall. I didn't believe that they did the killing but I wanted to talk to them. Harrison interpreted for me. I asked Elsie, out on the street before Cochran's store, if she knew anything about this man being killed. I believe she said there were too many people there to talk about it. I told her that if she told me all about it, I would help her however I could. She told me that if we went somewhere she would tell me all about it. Harrison and me proposed that we go up to Burnie's store. We separated Elsie and Margaret. Elsie told me that she killed Jones. She told me that he was acting crazy, and he ran at her with a knife, and she was so scared that she didn't know what to do, so she shot him in the left breast. I asked why she had not told this story before and she told me that she was afraid of the Chickasaws. She was also afraid to tell the white folks. I asked her if anyone else was involved, and she said no. She said that she and Margaret buried Jones.

Margaret showed me where Jones was buried. She told me, before we dug him up, which way he was laying. I only know what she said through an interpreter, because I know very little of the language. The body was in an old cellar. This is about 300 yards from where they live now. There was a graveyard nearby, about 30 to 50 yards away where Elsie's husband is buried. We dug down about two feet to find Jones' body. It appeared to be on its side. It was so decayed you couldn't see much about it, only bones. The stench was so bad I had to stand back about 20 or 30 feet. I didn't see his head all together, I only saw it piece by piece. Elsie said his head was probably broken up because of the rocks in the grave. After we examined the grave, I sent Beatty up to Whitehead to fetch Heck Thomas. He came down with Ed Stokely and I went with them to arrest Elsie and Margaret. They took them to a little house, Stuart's or Stout's, about three miles from Stonewall. I heard her say again that she killed Jones. Adkins was the interpreter. Margaret said that her mother killed him. I also showed up at Tanda Walker's when they were there. I was there when they brought Zeno Colbert in. They put irons on him after they brought him in. Elsie said, through the interpreter, "Zeno, you know that you killed that white man." She said that she had been scared to

say it, but that she was not scared now. Zeno said that he did not do it. She said that he shot him three times and then hit him over the head with his Winchester. I only understood this through the interpreter Sampson. Elsie said that she and Margaret buried Jones. Margaret, questioned separately, said that Elsie and Zeno buried him.

At the time, I didn't believe that Elsie could have done this killing. I still don't think she did it. I believed it was Stephen Alexander and Tumsey, Margaret's husband. I questioned Elsie about Jones' new shoes and any money he might have had, and she did not know anything about either. In this matter, I was not acting as an agent of the United States or Indian Territory. I got involved because I heard there was a man missing and I didn't believe these women done it. My reason was that I am a white man in the Indian Territory and if we don't protect one another you people in Arkansas won't do it.

I had known Zeno Colbert a long while. His only business was horse stealing. He was a bad character. I don't remember if I ever saw him carrying a Winchester, but everybody goes armed with Winchesters there.

Elsie did try to sell me some cattle that summer, back in June or July. She said she needed some money. I told her I was not in the market just then.

For the Defense:

Elsie James (examined through an interpreter)

She has lived on the other side of Stonewall, in the Chickasaw Nation for about 16 years. She was raised in the Choctaw Nation. She does not know how old she is. She does not speak English.

I rented land to John Adkins and he rented it to this man Jones.

I did not know Zeno Colbert until that spring of 1887. Zeno was always looking for Tumsey Mitchel, Margaret's husband. That Sunday, Zeno came to the fence in the morning and stayed there on his horse for awhile. He then came in the house and said he was looking for Tumsey. I told him that he wasn't there. Somebody asked him to stay for breakfast, and he did. I went to get the pigs out of the garden, and when I came back inside, Zeno was sitting down and Jones was standing and both were talking to each other. When Jones saw me, he went to his room and shut the door. I had loaned Jones \$2.50 for a permit and he gave me back \$1.50. I told him that was not enough and he said he would go to Adkins on Monday to get the balance.

Zeno left after breakfast. Susanna Alexander came and stayed nearly all day. There were some people hunting bees and they came in for dinner. Zeno came back in the evening. Margaret saw Zeno coming toward the house with his Winchester. I started towards the porch and Jones started following me. I saw Margaret coming out of a side room. She yelled at me that the man had a knife. I turned and saw him with a butcher knife and ran into my room. I heard gunfire. There were three shots. I ran outside and then heard Zeno calling to me to come back. He wanted to burn the body. He threatened to kill me if I told anyone. He left. Margaret had grabbed the children and left the house during all of this. She came back after Zeno left and we went around the house and found Jones' body on the porch. He was sort of lying on his side, with his feet towards the door to my room. We left him there that night. The next morning Frank Frazier came to the house and buried Jones. I told Frank that Zeno killed Jones and Frank promised not to tell anyone. I didn't know where Jones was buried. We used to go by where there was somethings piled up and I thought that might be where he was buried. Frank is now dead.

When I was at Tanda Walker's, Tanda interpreted for me. Tandy was the first one I told that Zeno had killed Jones. I did not tell it before because I was afraid of Zeno. I never asked Sampson Alexander to help swear to Zeno having \$60. I never told anyone that Zeno beat Jones on the head.

We did go up on the Canadian River. Tumsey told us there was some good land out there and he was making a house there. I did sell a pair of partly worn shoes on the Canadian River. The shoes had belonged to my husband.

When I was arrested, I didn't immediately tell about Zeno because he was not there and I was afraid of him. I turned over all of my property to Tanda Walker when I was arrested so that he

could employ lawyers for me. I turned some of it over to him to pay the lawyers with and the rest to hold it because I was afraid that Bond Underwood would try to get my property. I didn't know who to get for a lawyer and so I got Tanda to get them for me.

I didn't come to Fort Smith to report all of this because there was nobody to bring me and I didn't know the way.

Margaret James (examined through an interpreter)

Elsie's daughter. Cannot speak English, only Chickasaw.

William Jones was killed on a Sunday evening by Zeno Colbert. Zeno came by that morning, but he did not stay long. Stephen Alexander was also there that morning.

When Zeno came by that evening, I saw him ride up on horseback. He hitched his horse and came up and killed Jones with his Winchester. Jones was in the house and he came out in the hall with a knife in his hand. I told my mother about it and then I saw Zeno shoot once. When he shot, I ran off with my two children. I heard two other shots after I left. Afterwards, I went back to the house and Zeno was gone. Jones was dead in the hall. We left him there all night. Frank Frazier buried him the next day.

I was afraid to tell anyone that Zeno had killed Jones. Bond Underwood drew a gun on me and scared me and made me tell that my mother killed Jones.

I saw Jones give my mother some money that Sunday. It was a dollar or a dollar and a half. I didn't see Jones with any new shoes.

Mack James (examined through an interpreter)

Son of Margaret James. Eight years old.

Zeno Colbert killed William Jones. I saw him do it. I was at the cow lot beside the house. I saw Zeno come up the road on horseback. He hitched his horse to a Black-Jack tree, then he come to the house and killed this man. He fired three times. He talked to my granny and then rode off. I didn't hear what he said to her. Frank Frazier took the body off next day. I didn't see where he was buried.

Jones went to Stonewall the day before he was killed. I saw him with some shoes when he got back. I didn't see the shoes again.

Tanda Walker

The defendants were brought to my house after they were arrested in October of 1887. I heard Elsie make a statement in the presence of Zeno Colbert. Through an interpreter we had she told him she was arrested and she said she was a poor old woman, and she says you are a man, and you came over and killed that old white man, and it is laid on me. Zeno said he didn't know anything about it. When he said this he hung his head down and was whittling with a knife.

I didn't see Elsie talking to Sampson Alexander at the marshal's camp. In the conversation between Elsie and Zeno I don't recollect hearing anything about the burial.

My sister speaks Chickasaw very well. Elsie told her that she was in the hands of the officers now and she thought she would be protected and that she wanted to have a talk with me. I understand a few words of Chickasaw but can't go into a conversation.

The day after Zeno was arrested, Elsie came up and asked me to take charge of her property and see to it and see about getting her attorneys. I have never taken any money from her as pay, only for taking care of the stock. I turned all of the property over to the attorneys.

For Teachers Only: A Summary of the 1889 Verdict and Sentence

On March 22, 1889, the jury found Elsie James guilty of the murder of William Jones. Her daughter, Margaret, was acquitted. James' attorneys immediately filed a motion for a new trial which Judge Parker denied on April 29. Parker, through a Chickasaw interpreter, issued the mandatory death sentence that same day. According to the *Fort Smith Elevator*, a local newspaper, Elsie "protested her innocence vigorously."

Before the hanging could occur, the case was brought to the attention of U.S. President Benjamin Harrison. He postponed the execution "in order that he might more thoroughly investigate [the] case before passing upon [it]." Within two weeks, Harrison commuted Elsie's sentence to life imprisonment. She served her time at the Ohio State Penitentiary in Columbus.

United States vs. Jack Spaniard

Spaniard is on trial for the murder of Deputy United States Marshal William M. Irwin. The murder occurred near Pheasant Bluff in the Choctaw Nation on April 12, 1886. Spaniard was arrested on March 17, 1888 and has been in the Fort Smith jail since that time. His trial takes place between April 9 and 12, 1889.

Spaniard is one-quarter Cherokee and was born and raised in the Cherokee Nation. At the time of Irwin's murder he lived at Texanna, about twenty-five miles from Webber's Falls. He is 36 years old, "a fine looking man of medium height, trim built, with black hair, black moustache, and brown eyes."

For the Government: District Attorney M.H. Sandels and his assistant C.M. Cooke

For the Defendant: Thomas Marcum, George A. Grace and Elias C. Boudinot

Victim: William M. Irwin (or Erwin), Deputy U.S. Marshal for the Western District of Arkansas. Irwin resided at Webb City, Arkansas and was appointed a deputy on January 1, 1886. He formerly was a mail contractor between Webb City and Charleston, Arkansas (both in Franklin County). The father of two children, Irwin was a widower. His children now live with his mother in Fort Smith.

Other Suspects: Felix Griffin (killed in 1887 while stealing horses near Webber's Falls; arrested for murder and robbery but was never indicted for the murder of Irwin)
Frank Palmer (whereabouts unknown)

Other Witnesses Unaccounted For: Belle Starr (murdered in February 1889)

Evidence: writs, bloody with holes through them

Summary of the Government's Argument: On the day of the murder, Irwin was traveling with Felix Griffin whom he had under arrest. Irwin was riding a gray horse and Griffin a brown horse. Witnesses will establish that the deputy and his prisoner were followed by two men identified as Jack Spaniard and Frank Palmer. Spaniard was riding a sorrel horse and Palmer a brown or bay horse. They were followed by Palmer's dog which will appear in court. Although no one actually witnessed the murder, the government will establish that Spaniard and Palmer eventually caught up to Irwin and Griffin. Shots were heard from several witnesses and Irwin's body was found the following day.

Summary of the Defendant's Argument: Witnesses will testify that Jack Spaniard was not with Felix Griffin on the day following the murder.

Summary of the Defendant's Argument: Witnesses will testify that Jack Spaniard was not with Felix Griffin on the day following the murder.

FOR THE GOVERNMENT:

Squirrel Fields:

Both today and in the spring of 1886, Fields lived in the Canadian District of the Cherokee Nation. At the time of the murder he was a plowman and operated a ferry about a quarter mile from the mouth of the Canadian River. The ferry transported passengers and vehicles between the Choctaw and Cherokee Nations. Fields is a Cherokee and speaks through an interpreter.

In 1886, I operated a ferry across the Canadian River about a quarter mile from its mouth. Irwin, riding a gray or white horse, and Griffin, riding a brown horse, came to my house to cross the river. I did not see a dog with them. Irwin said he wanted to go through to the Choctaw Nation and subpoena some witnesses.

About an hour after Irwin and Griffin crossed, Jack Spaniard rode up on a good sized sorrel horse with a white man I did not know and a dog. I do not know if it was the same dog that is here. Jack Spaniard inquired if anybody had crossed and I told him that I set over the marshal and a prisoner. Spaniard said he wanted to cross. Spaniard and the white man both had pistols. They went right down the road the same way the marshal went. When Jack and the white man came in sight they were traveling leisurely; when they started off on the other side of the ferry they went in a lope or in a run. I heard of the killing two days later. There was a great deal of crossing at this ferry but I do not remember having set anybody else over that day.

Aus Castleberry:

In the spring of 1886, Castleberry lived with Smedley Forrest near Pheasant Bluff in the Choctaw Nation. He worked as a hired hand for Forrest.

The evening Irwin was killed I saw the marshal and a prisoner pass by the place where I lived at Pheasant Bluff in the Choctaw Nation. One was riding a gray horse and the other a bay or brown. They were traveling at a walk. Afterward I saw some other men pass. I didn't know their names. There were two of them followed by a dog. They were in a lope going in the same direction, one on a sorrel and the other on a brown or bay horse--dark color. They didn't stop or halt and were about ten or fifteen minutes behind the first men. I do not know if Jack Spaniard was one of the men or not. I heard shots, three or four, down in the direction, the way the parties had passed.

The next day I rode to the Pheasant Bluff store for some tobacco and there was a horse there that some men said had come up loose with a saddle and bridle on it. I believed it was the same horse that had passed the night before. I made a proposition to the men to ride back up the road to see if we could find anything. We found a white hat and then the body.

Irwin was lying pretty well on his back and had a pistol on in the scabbard buckled around him. I don't recall seeing any gun on his gray horse. I didn't notice whether his pistol had been shot. He had been shot through the breast and back. He had some papers in his pocket and the papers

were bloody and some of them had a hole through them. They put him in a wagon and brought him toward town.

Smedley Forrest:

Both today and in the spring of 1886, Forrest lived near Pheasant Bluff in the Choctaw Nation. He makes his living through merchandising and farming. He previously was a deputy sheriff, clerk, county judge and district collector for San Bois County of the Choctaw Nation.

On the evening Irwin was killed I was talking to Harris on the road where Irwin was killed. Irwin's body was found 150 or 200 yards from where we talked. I saw a black dog with yellow legs. The dog looked like a half hound. The dog was much the same kind as this one I see here in court, though he was not then so fat. When I saw the dog he was tracking or hunting something.

I left Harris and went home and heard a gunshot and someone hallo. I think there were three or four more shots fired, one right after another. When I heard the hallooing I jumped up and went out and heard the men but didn't see them. It was pretty good dark by this time. I heard someone hallo, wh-o-o-e-e. He hallooed several times, and then some other fellow hallooed, h-o-o-p-e-e. I whooped several times. They came pretty nearly down to my place and stopped, and then someone else hallooed, and we just stood there quite a long while and heard them talking. I thought there was about three of them from the sounds of the voices. I could hear their voices, but could not tell what they were talking about. One man seemed to be separated from the others and when he whooped, the others hallooed in a low tone to them. It seemed like they wanted to get together without making it known. The men were all riding. I could hear the sound of the horses' feet and the last I heard of them, it seemed like they were traveling slow--just a moderate gait.

The next morning I was notified that Irwin's body had been found. I found Irwin's pistol in his belt. It was loaded all around. I took some papers out of his pocket. The ball struck in the left side and went through the body and passed through the papers (writs); this is one of the papers--it looks just like it. The ball went pretty near straight through. When I went back home around where the horse had been, I found a patch wadded up that had gone through his body. It was bloody. I examined tracks around and it looked like there was three of them running along out in the road where the body was.

W.M. Wagner:

In the spring of 1886, Wagner lived at Martin Crowder's place in the Choctaw Nation. He now lives in Missouri. At the time of the murder, Wagner operated a sawmill but also owned a small boat he used to cross the Canadian River. The was located about a mile and a half down river from Belle Starr's crossing.

I remember two men coming to Martin Crowder's (where he was living in the spring of 1886) the day after Irwin was killed. One of them was Felix Griffin, riding a dark bay or brown horse, and I did not know the other man. He was riding a sorrel horse. I have never seen Spaniard.. These men wanted to cross the river and I told them that my boat was too small for the rough state of the river. I told them to see Belle Starr about a mile and half up river. I went up there with them and hallooed to Belle and she came across. Both men armed with pistols. They had a

dog with them--a black, dun, hound; I have seen the same dog here I think. I do not recognize the defendant and do not know whether or not Spaniard was one of the two men.

Robert Cox:

Cox currently lives at Tulsey, Indian Territory. He used to lived in Fort Smith and is the brother of Burrell Cox.

I saw Ed Reed about a year ago at Tulsey (Tulsa) and asked him if Spaniard was at his house the day after Irwin's murder. Reed replied that he knew Spaniard very well and that Spaniard was there. It was him.

FOR THE DEFENSE

Ed Reed

Reed is the son of Belle Starr and lives on the Canadian River in the Cherokee Nation, twenty-two miles from Webber's Falls. He is 18 years old and currently under indictment for horse theft.

I did not see Felix Griffin the day Irwin was killed. On either the day after the murder or the day after I heard about the murder, Griffin came to the river by our house. I took Felix and another man across the river to our house. I do not know who the other man was, but it was not Jack Spaniard. I am positive the man with Felix was not Jack Spaniard. I did meet Bob Cox at Tulsey last spring but I did not tell him that on the day after Irwin was killed Griffin and Spaniard came to our house.

Pearl Starr (or Younger)

Starr is the daughter of Belle Starr and lived with her mother on the Canadian River at the time of the murder. She was 18 years old at the time of the murder.

I knew Felix Griffin and Jack Spaniard and saw Griffin at our house the day after Irwin was killed. He came across the river with my brother and there was another man with him but it was not Jack Spaniard.

For Teachers Only: A Summary of the 1889 Verdict and Sentence

Within an hour of being given the case, the jury convicted Spaniard of the murder of Deputy Irwin. According to a local newspaper, "the evidence against Spaniard was all circumstantial, but very conclusive judging from the promptness with which the jury arrived at a verdict." The reporter also commented that the government "had their chain of evidence...so well linked that it was impossible for the defense to weaken it."¹

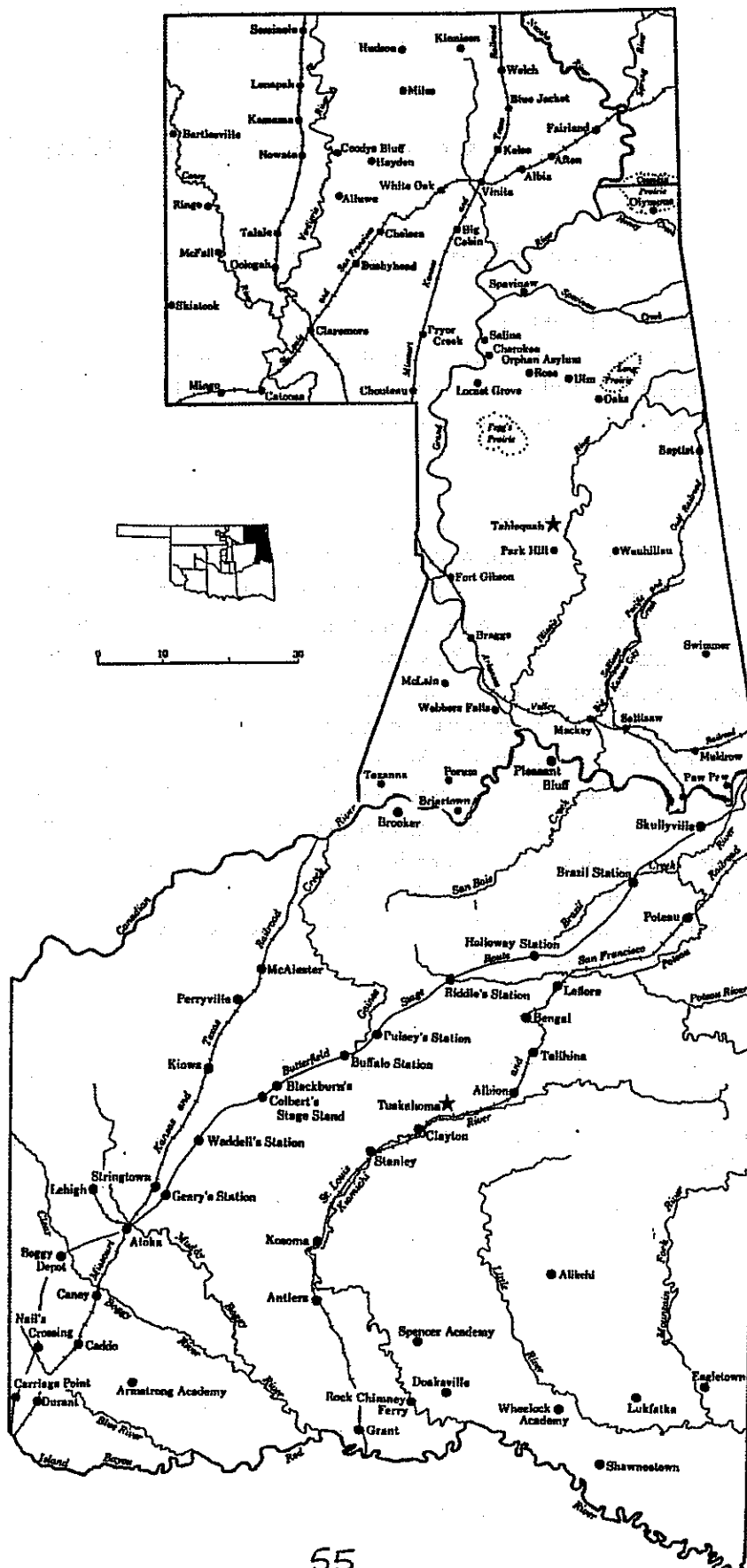
Judge Parker sentenced Spaniard to death on April 29, 1889. When asked if he had anything to say, Spaniard professed his innocence.

George Maledon conducted the execution of Spaniard on August 30, 1889. Spaniard initially resisted the efforts of deputies to remove him from his cell on the execution day, but finally relented and went quietly to the gallows. He did not have any last words. Spaniard was buried by relatives at Webber's Falls.²

¹ *Fort Smith Elevator*, April 19, 1889

² *Fort Smith Elevator*, September 6, 1889

Cherokee and Choctaw Nations



V. Classroom Strategies for Teachers

The case files hold opportunities not only for extensive mock trial experiences but also less complex classroom activities. By all means, this material should be used to fit the specific needs of the instructor and students. The following activities are suggested.

- **Mock Trial at the Old Fort Museum using the Courtroom of Judge Isaac C. Parker**

To learn about scheduling and planning procedures, please call 783-7841.

- **Mock Trial in the Classroom**

Given the constraints of time and transportation, a mock trial at the Old Fort Museum may not be possible. A classroom can easily be converted to a courtroom by arranging desks and chairs appropriately (see diagram)

- **Field Trips**

Fort Smith is a community rich in historical and legal resources. In addition to the courtroom, the Old Fort Museum interprets the history of Fort Smith from the 1817 to the present. Permanent exhibits on Fort Smith during the Parker era, as well as "In the Shadow of the Gallows," are available to students. The museum is open 10:00 to 5:00, Tuesday through Saturday. Phone: 783-7841

While currently undergoing renovations, Fort Smith National Historic Site features the courthouse and jail used by the Western District of Arkansas. A reproduction of the 1886 gallows is a prominent site feature as well. Exhibits and audio-visual programs are also available. The Historic Site is open daily 9:00 to 5:00, except Christmas and New Year's. A fee waiver is offered to student groups. Phone: 783-3961. (The courthouse/jail building will reopen in the Spring of 2000.)

A visit to a modern courtroom will further introduce students to the legal process. Fort Smith remains the seat of the Western District of Arkansas with courtrooms at the Judge Isaac C. Parker Federal Building.

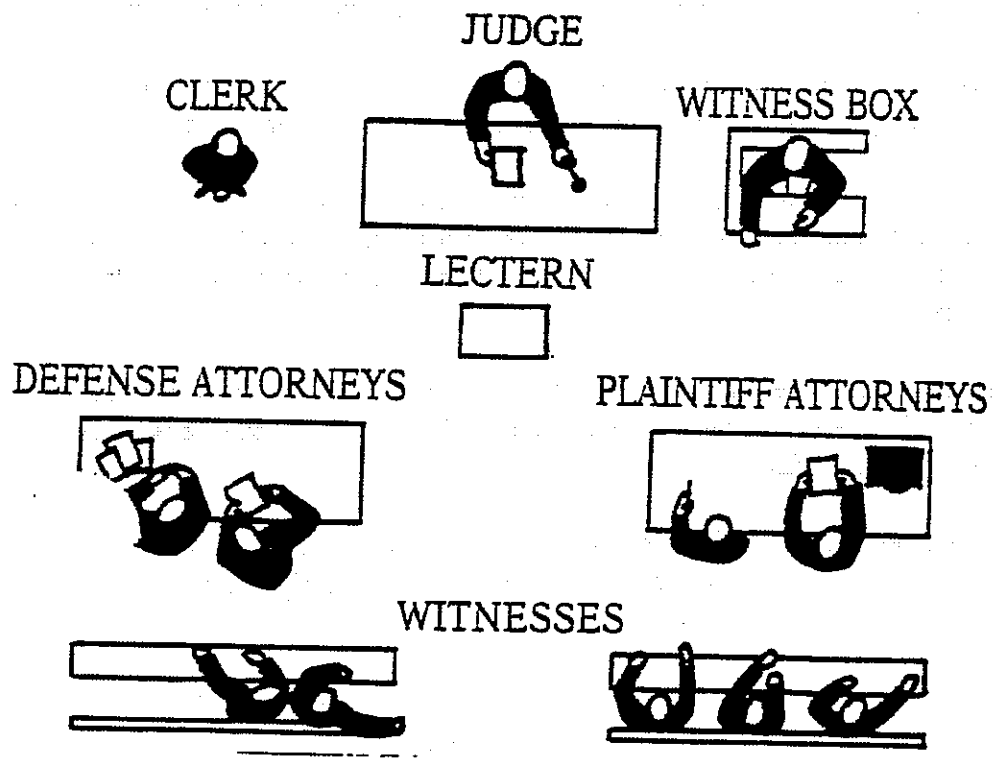
- **Guest Speakers**

The staffs of the Old Fort Museum and National Historic Site are available for classroom visits and activities.

Contact the Sebastian County Bar Association to arrange for guest speakers from the legal profession.

Classroom Arrangement

For the actual trial, the room should be arranged as follows:



VI. Glossary

Adultery: Voluntary heterosexual intercourse between a married person and a person who is not the husband or wife. Although the Western District Court tried relatively few adultery cases, it was a federal crime if it involved a non-tribal resident of Indian Territory.

Appeal: a request from the losing party in a trial that a higher court review the decision.

Court: an agency of government authorized to settle legal disputes.

Cross (and Re-Cross) Examination: questions asked by lawyers of witnesses called by their opponents.

Direct (and Re-Direct) Examination: questions asked by lawyers of witnesses they have asked to come to court in order to bring out evidence for the fact finder.

Evidence: information in testimony or in documents that is presented to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Grand Jury: a body of citizens who listen to evidence of criminal activity presented by the government in order to determine whether there is enough evidence to justify filing an indictment. Federal grand juries consist of 16-23 persons and serve not more than 18 months.

Hearsay: evidence that is presented by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay evidence is usually not admissible as evidence in the trial.

Indictment: the formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; used primarily for felonies.

Instructions: the judge's explanation to the jury, before it begins deliberations, of the questions it must answer and the law governing the case.

Judiciary Act of 1789: the law that first set up the system of federal courts and established their jurisdiction.

Jurisdiction: (1) the legal authority of a court to hear and decide a case; (2) the geographic area over which the court has authority to decide cases.

Manslaughter: An unlawful killing without malice. It is a crime less severe than murder.

Mitigating circumstances: Facts that do not justify or excuse an action but that can lower the amount of moral blame and thus lower the criminal penalty or civil damages for the action.

Parties: the person or persons; corporation or corporations involved in legal disputes, civil or criminal.

Petit Jury (or Trial Jury): a group of citizens who hear the evidence presented by both sides at a trial and determine the facts in dispute. Federal criminal juries consist of 12 persons (sometimes with 1 or 2 alternate jurors in case 1 of the 12 cannot continue). Federal civil juries usually consist of 6 persons, with alternates. "Petit" is French for "small," thus distinguishing the trial jury from the larger grand jury.

Plaintiff: the person who starts an action, files a complaint, or sues another person.

Plea: in a criminal case, the defendant's statement pleading "guilty" or "not guilty" of the charges.

Premeditated: thinking in advance about how to do something (usually how to do a crime)

Prosecute: to charge a person with a crime or civil violation and seek to gain a criminal conviction or a civil judgment.

Remand: when an appellate court sends a case back to a lower court, often following a reversal.

Reversal: when an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand.

Statute: a law passed by a legislature.

Subpoena: a court's order to a person that he or she appear to testify in a case.

Testimony: evidence taken after oath in court to tell the truth; questions answered under oath concerning what a person knows about a case being heard in court.

Transcript: a written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a "transcript" of a telephone conversation.

Uphold: when an appellate court does not reverse a lower court decision.

Verdict: a jury's decision.

Writ: warrant; written permission given by a judge to a law enforcement officer to arrest a person, to conduct a search, etc.

Mock Trial Observation Sheet

Please note comments about each presentation, including things which could have been done differently or improved upon.

PLAINTIFF TEAM	DEFENSE TEAM
Opening Statements	Opening Statements
Direct Exam of First Plaintiff Witness	Direct Exam of First Defense Witness
Direct Exam of Second Plaintiff Witness	Direct Exam of Second Defense Witness
Cross Exam of First Defense Witness	Cross Exam of First Plaintiff Witness
Cross Exam of Second Defense Witness	Cross Exam of Second Plaintiff Witness
Objections	Objections
Procedures for Using Documents	Procedures for Using Documents
Closing Arguments	Closing Arguments
	Observer's Name: _____
	Date: _____

